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JOSE HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

JOSE HERNANDEZ,

Plaintiff,

v.

SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY,  
a public entity; and DOES 1 through  
20, inclusive.

Defendants.

Case No. GIC 871979

[PROPOSED]

**SECOND AMENDED COMPLAINT**

**VIOLATION OF CALIFORNIA LABOR  
CODE SECTION 1102.5, et seq.;  
(Retaliation for Disclosing and Opposing  
Violations of California Public Utilities  
Codes and California Code of Contracts)**

Dept.: 71  
Judge: Hon. Richard E. Strauss  
Complaint Filed: September 1, 2006  
Trial Date: None Set

**I**

**FACTS COMMON TO ALL CAUSES OF ACTION**

(Against All Defendants)

1. All the events herein alleged occurred within the County of San Diego, State of California. Plaintiff is a resident of the County of San Diego, State of California and was employed by the San Diego County Regional Airport Authority at the time of the events herein alleged. The defendant SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY (hereafter "AUTHORITY") is, and at all material times herein was, a public entity created by state law pursuant to the California Public Utilities Code Section 170000, et seq., Division 17, Chapter 1, Chapter 2, Chapter 3 to operate the San Diego International Airport (Lindbergh Field) and is an entity charged by law as the employer of the staff members of the

1 AUTHORITY and is duly organized and existing under the laws of the State of California.  
2 Under California Public Utilities Code Section 170032 et seq. the AUTHORITY may be sued  
3 in all actions and proceedings in all courts of competent jurisdiction.

4 2. The AUTHORITY is responsible for public health and safety surrounding the San  
5 Diego Airport, including airport land development and charged with minimizing "the public's  
6 exposure to excessive safety hazards around airports." The AUTHORITY'S management and  
7 budget of \$113.8 million is overseen by the AUTHORITY'S President/CEO Thella Bowens  
8 (Doe No.1). Bowens reports to a Board of Directors and her employment is approved by the  
9 San Diego Port District.

10 3. The Plaintiff JOSE HERNANDEZ began employment at the San Diego County  
11 Regional Airport Authority in March 2001 as Manager, Ground Transportation and was then  
12 promoted to Director, Landside Operations.. In this position Plaintiff managed the operations  
13 of the airport terminal buildings, the parking lots, the ground transportation services and  
14 provided "expert assistance in the planning and long-range business decision making for  
15 managing the airport's facilities." Plaintiff reported to the Vice President, Airport Operations,  
16 who had managerial responsibility for all aspects of airport operations. Plaintiff was  
17 specifically required to make decisions "in operating the parking facilities to ensure the highest  
18 levels of efficiency [and] economic advantage." Plaintiff was also required to represent the  
19 Authority in dealing with tenants and contractors.

20 4. Plaintiff does not know the true names or capacities (whether individual or other  
21 wise) of defendants DOES 2 through 20) and will amend this pleading when their true  
22 identities have been ascertained.

23 5. All defendants were the agents and employees of each other and performed the  
24 acts alleged in this complaint in the course and scope of their agency and employment with the  
25 consent and direction of the other; and in dual capacity as individuals, subjecting  
26 Plaintiff to, but not limited to, acts of harm, harassment and hostility.

27 6. This action arises under the provisions of the California Labor Code Sections  
28 1102.5 to 1102.8 et seq.; California Public Utilities Code Section 170000, et seq.

1 7. Plaintiff was an outstanding employee who always performed at levels above and  
 2 beyond what could normally be asked of an employee. Plaintiff's performance was  
 3 greatly praised by staff members, Board members and individuals from external agencies. The  
 4 Vice President of Airport Operations stated that the number of employees performing at the  
 5 Plaintiff's level could be "counted on one hand with several fingers left over."  
 6 Plaintiff consistently and constantly reported on a daily basis to this Vice President all actions  
 7 and events he was involved in, and withheld no information regarding his own  
 8 activities, viewpoints, opinions and observance of the activities of other employees, including  
 9 management. Plaintiff has never been criticized or disciplined for anything during his  
 10 employment with the Authority until the events of December 2005 that led to  
 11 his improper termination from the Authority in February 2006.

#### 12 13 **FIRST CAUSE OF ACTION**

#### 14 **Violation of California Labor Code Section 1102.5 et seq.**

#### 15 **Retaliation for Protected Disclosure**

#### 16 **(Against All Defendants).**

17 8. Plaintiff incorporates paragraphs 1 through 7 of the Facts Common to All Causes  
 18 of Action as though fully set forth herein.

19 9. Within the Airport Authority there was tension between the two operating  
 20 divisions: the Operations Division headed by the Vice President to whom Plaintiff reported that  
 21 was responsible for Airside, Terminal, and Parking/Ground Transportation; and the Real Estate  
 22 and Capitol Development Division headed by Vice President  
 23 Bryan Enarson. There were two distinct camps: Operations was primarily driven to  
 24 respond to the Authority's airline tenants and airport guests; while Enarson's Real  
 25 Estate/Capital Development was driven by his need for bureaucracy that prolonged project  
 26 completion times and substantially increased project expenses. Enarson had  
 27 ingratiated himself to Bowens and set himself up as her close advisor. Bowens comes  
 28 from a background as a budget analyst and is not considered a good public speaker or as a

1 comfortable public spokesperson for the Authority. She looked to Enarson on a daily basis as a  
2 confidante and leaned on him as her closest ally. Enarson had Bowen's ear and had not only  
3 constant access but also constant influence on Bowen. The tension between Enarson and the  
4 Vice President of Airport Operations began to involve Plaintiff and escalated after Enarson's  
5 Real Estate/Capital Development received insufferable ratings on the Airport's commissioned  
6 Tenant/Customer Satisfaction Survey. Instead of focusing efforts on improving the areas that  
7 were weakest, Enarson chose to take a proactive approach to diminish the accomplishments of  
8 the Operations Division. Enarson began to insert himself in areas that were not his  
9 responsibility such as taking Bowens on walk-throughs of the terminal buildings without the  
10 presence of a member from the Operations Division to point out what displeased him and  
11 sought to take credit for Operations initiating projects that were not his initiatives and were not  
12 pushed forward by him. While Enarson's team was involved in the projects such as Flight  
13 Display Upgrades and Security Check Point Reconfiguration the projects were driven by the  
14 Operations Division, and not by Enarson. Enarson began escalating his obstruction of  
15 development projects.

16 10. With space at a premium in the airport, the airport's redevelopment plan included  
17 development of an overall concessions plan. Enarson had received unacceptable ratings on the  
18 concessions program which he oversaw as Vice President. In the past, Enarson's Development  
19 Division had simply taken space, but now resisted and refused to negotiate  
20 space needed to improve the women's restroom. The improvement plans had been in the works  
21 for over five years and called for a removal of approximately 30 square feet from the news and  
22 gift stand belonging to Host. In the process it was revealed that Enarson had entered into side  
23 deals with a handshake agreement with Host that restricted the Operations Division's ability to  
24 annex the space which was needed to comply with ADA requirements. The Plaintiff had  
25 reasonable cause to believe that the Authority was in violation of the federal American  
26 Disabilities Act and its enabling regulations. Because Enarson refused to either take the space  
27 away from Host or renegotiate with them, major modifications had to be made that increased  
28 the project budget by over \$2 million. During the long delays women were forced to endure the

1 long lines to use the restrooms. There was no access for the disabled to the restroom for which  
2 the Plaintiff also had reasonable cause to believe that the Authority was in violation of the equal  
3 access provision and regulation of the ADA.

4 11. The Plaintiff disclosed to members of the Authority Enarson's "side deal" made  
5 with out negotiation that restricted the Authority's ability to annex the space needed to comply  
6 with ADA requirements for the airport restroom. Plaintiff also disclosed that Enarson's refusal  
7 had increased the project budget by over \$2 million. On both counts, Plaintiff believed that he  
8 was disclosing legal violations: violations of the ADA requirements and also disclosing the  
9 unauthorized use of public assets because Enarson had a "handshake" deal. The project  
10 suffered over three (3) years of delays due to Enarson's conflict with the airport's food and  
11 beverage concessionaire.

12 12. The General Dynamics property is approximately 85 acres and sits along Pacific  
13 Coast Highway on the north side of the airport. The property contains a 1,600 parking stall  
14 long term parking lot (SAN Park Pacific Highway), and provides for Convention  
15 Center truck staging, rental car storage, and Cruise Ship truck staging. The terms of the  
16 original three year lease called for rent of \$4.6 million year one, \$6.6 million year two, and \$8.6  
17 million year three. Enarson was the lead negotiator on the lease. When Plaintiff compared the  
18 revenue potential of the approximately \$3 million net from the parking operation and \$1 million  
19 from the vehicle storage, the lease payments were too expensive and out of line. Plaintiff  
20 disclosed that the increased lease payments pulled funds away from the operating budget and he  
21 believed it was an unauthorized use of the Authority funds. Plaintiff also believed the failure to  
22 negotiate the lease properly was a violation of law and contrary to public interest. The Plaintiff  
23 had reasonable cause to believe that this failure and other actions related to the lease were  
24 unlawful acts that violated California Public Utilities Code section 170056 (f)(1)(2)(3) Plaintiff  
25 had reasonable cause to believe that the terms of the lease were in violation of the California  
26 Public Utilities Code section 1700056(f)(3). Despite the Plaintiff's objections to the actual  
27 revenue streams, Enarson decided the matter would go up to the Vice President level, where it  
28 died and no corrective action was taken. The lease was signed contrary to the objections of true

1 forms of revenue streams.

2 13. The Authority's Teledyne Ryan property lease calls for \$3 million in annual  
3 payments for the 46.77 acre property, located immediately east of the airport along Harbor  
4 Drive. At the time the lease was negotiated, with Enarson as the lead negotiator, contamination  
5 of the property allegedly required approximately \$10 million. The failure to properly inspect  
6 and analyze the actual contamination resulted in a finding that the contamination remediation  
7 range would be approximately \$30 million and would limit the use of the property to the  
8 existing 350 space long term parking lot (SAN Park Harbor Drive). Current revenues derived  
9 from the parking lot are approximately \$1.2 million a year with about \$700,000.00 in expenses,  
10 netting the Authority only \$500,000.00. The original plan for the property was to phase in the  
11 parking development from what is now Phase I, 350 parking stalls, to Phase 2, approximately  
12 1,300 stalls. If the project had stayed as planned the property would now be developed and be  
13 positioned to take advantage of the increasing occupancy levels in the market. When the  
14 development process began the discovery of the deep environmental concerns with the  
15 property, which were not previously disclosed before Enarson completed the negotiations for  
16 the lease, significantly curtailed the purpose of the lease because of the unusable areas. Plaintiff  
17 disclosed the findings that there was no way to open Phase 2 of the parking development and  
18 also disclosed the enormous amount of money the Authority was paying for the lease. The  
19 Plaintiff believed that these acts by the Authority were unlawful and in violation of California  
20 Public Utilities Code section 170056(a)(1)(B). Further, the Plaintiff's disclosure of the  
21 unlawful acts occurred at committee meetings closed to the public, at management and staff  
22 meetings closed to the public. Plaintiff asked the Authority members, including Enarson, "Why  
23 are we paying all this money? Why are we paying the rent?" Enarson replied, "We're obligated  
24 to pay the rent." Plaintiff stated that "we can use a little bit, 351 parking stalls, yet we're paying  
25 \$3 million and we can't use any of the rest. We're on the hook for the \$30 million. We should  
26 only pay a pro rata amount." Enarson's response was that it would get pushed up to the Vice  
27 President group. When the Teledyne Ryan transition team, of which the Plaintiff was a  
28 member, re-briefed the Vice Presidents, at a second meeting, the members and officers were in



1 awe, and asked, "Are you sure it's \$30 million? Are you kidding me?" Enarson was agitated  
2 and Plaintiff received reports that Enarson was angry.

3 14. In January 2004 Lindbergh Parking (hereafter "LPi") was awarded a new five (5)  
4 year service agreement for the management of the airports' employee and public parking lots.  
5 Services included the management of the airport's inter-terminal, "Red Bus" and the Employee  
6 shuttle service, as well as the taxicab and shuttle-for-hire dispatch system. The total operating  
7 budget is approximately \$8 million. Although the Request for Proposal process was highly  
8 contested LPi was the preferred candidate largely because of its' lower operating expenses. The  
9 contract commenced on February 1, 2004. There were immediate disagreements with the  
10 operator because of contractual requirements. As a key component of the shuttle service, the  
11 operator was to provide new vehicles at the beginning of the agreement and change them over  
12 every 2 ½ years. The vehicles did not arrive until four months later. During these four months,  
13 the operator was able to make a substantial amount of profit because they did not have to make  
14 monthly lease payments for the vehicles since they had already been paid off. The fleet  
15 consisted of six (6) employee, three (3) Red Bus vehicles, and two (2) interchangeable shuttles.  
16 The average lease of a vehicle was \$1,650.00 per month and amounted to approximately  
17 \$18,150.00 per month in extra profit for the operators. Their contract provided for an hourly  
18 reimbursable for operating hours plus fuel expense. No vehicle lease cost meant more profit.  
19 These difficulties were chalked up as operational issues and the Authority moved on.

20 During the Request for Proposal process Lpi had indicated they could operate the long  
21 term parking lot, SAN Park Pacific Highway, 1,600 parking stalls along Pacific Highway, for  
22 approximately \$1.3 million annually. As the operating numbers began to appear the actual  
23 expenses were projected at \$1.7 million annually, higher than the previous operator. Expense  
24 projections for the other Authority parking properties projected similar increases. It was clear  
25 that LPI purposely submitted unattainable expense numbers in order to bolster their proposal.  
26 The Plaintiff had reasonable cause to believe that he was disclosing unlawful violations of both  
27 the Authority's Contract Code and the California Code of Contracts section 100. Although  
28 unhappy with the operator the Plaintiff had no choice but to work with the operator to control

1 expenses.

2 Maurice Grey is the President of LPI. Plaintiff made it clear to Grey that he wanted to  
3 see the Liability and Workers Compensation Coverage for the parking service competitively bid  
4 for renewal. On the day before the existing coverage was set to expire Grey presented Plaintiff  
5 with a premium scale which far exceed expense projections. Plaintiff met with Grey and  
6 stressed to him that he needed to go through in detail all of the operating expenses and analyze  
7 each of the employee job positions, including Grey's. As part of the process Plaintiff asked  
8 Grey to prepare a job description of his own job and the jobs of each of his managers. All of  
9 them were interviewed to get a good understanding of their duties. The process determined that  
10 most, if not all, of the duties claimed by Grey were actually performed by others. Plaintiff  
11 explained to Grey that he needed to be able to justify continuing paying his salary and that on  
12 paper, the salary was not justified. Plaintiff informed Grey he would give him three months,  
13 until the end of summer, to show his job duties that would justify the pay and if not he would  
14 have to go. Subsequently, Grey's management skills resulted in his expenses being out of  
15 control, he failed to hire proper personnel, and he could not properly bid items. Again Plaintiff  
16 extended Grey's deadline to substantiate his job worth until the end of the year, December 31,  
17 2005. The Plaintiff's disclosures of the Authority's failure to follow the California Code of  
18 Contracts, section 100 were protected disclosures that the Plaintiff had reasonable cause to  
19 believe were unlawful, and also were in violation of the Authority's Contract Code. The  
20 Plaintiff worked under the requirements of both of these laws in his position as a Director, and  
21 expected the Authority to comply with each and every one of the Code requirements and  
22 regulations.

23 Plaintiff then discovered that LPI was double billing the Authority for Workers  
24 Compensation Insurance. He had noted that the premiums were running twice the amount of  
25 the previous year and were being billed to a different expense category. As a result Plaintiff  
26 posted a credit of approximately \$150,000.00 against LPI's monthly request for reimbursement.  
27 Plaintiff had communicated throughout the process and disclosed LPI's wrongdoing and  
28 financial misuse issues with his direct supervisor, the Vice President of Airport Operations.



1 The Vice President asked Plaintiff to work out the issues with Grey because he was a Minority  
2 Owned Business and the Authority needed the relationship in order to comply with FAA  
3 regulations governing Minority participation. Plaintiff had disclosed computational or other  
4 errors in LPI's bid submission; the unsatisfactory performance of the contract; the failure of LPI  
5 to submit insurance documents acceptable to the Authority; Grey's unjustified refusal to  
6 warrant his performance and other offenses and actions that indicated a lack of business  
7 integrity by LPI. Plaintiff believed that disclosures he made pursuant to the contract contained  
8 violations of the Ethics Code and also of rules and regulations of law.

9 15. On or about July 11, 2006 Plaintiff filed his San Diego County Regional Airport  
10 Authority Damage Claim Form alleging the incidents of disclosure contained above herein and  
11 for the retaliation he suffered based on the disclosures of legal violations described above. On  
12 or about August 1, 2006 defendant AUTHORITY denied Plaintiff's claim.

13 16. California Labor Code Section 1102.5 is intended to encourage employees to  
14 report legal violations or a refusal to participate in such violations. Plaintiff in good faith  
15 reported, disclosed, divulged and brought to the attention of his employer facts and information  
16 relative to both suspected and actual violations of law directly related to his job. Plaintiff  
17 observed improper governmental activity by employees of the San Diego County Regional  
18 Airport Authority undertaken in the performance of the employees' official duties that  
19 demonstrated economic waste, incompetency and inefficiency in a government agency. Under  
20 California Labor Code Section 1102.5 (c) an employer may not retaliate against an employee  
21 for refusing to participate in an activity that would result in a violation of a state or federal  
22 statute, or a violation or noncompliance with a state or federal rule or regulation. Further, under  
23 California Labor Code Section 1102.5 (b) an employer may not retaliate against an employee  
24 for disclosing information to a government or law enforcement agency, where the employee has  
25 reasonable cause to believe that the information discloses a violation of state or federal statute,  
26 or a violation of noncompliance with a state or federal rule or regulation. Under California  
27 Labor Code Section 1102.5 (e) a report made by an employee of a government agency to his  
28 employer is a disclosure of information to a government or law enforcement agency pursuant to

1 subdivisions (a) and (b).

2 17. By September 2005 an Authority Internal Audit of parking management operating  
3 expenses had determined that Lpi had double-billed the Authority for Workers Compensation  
4 Insurance for a total of four (4) months.

5 18. By October 2005 the Plaintiff had met with the Vice President of Operations to  
6 inform the Vice President of Operations of the status of LPI's non-compliance and areas of  
7 deficiencies and to obtain agreement that Maurice Gray would step down as President of LPI  
8 should he not be able to comply with the standards and improve the deficiencies and clarify his  
9 job duties for his position. Pursuant to the California Code of Contracts section 1100, the  
10 Authority was required to comply with the California Code of Contracts, section 100(b), which  
11 the Plaintiff had reasonable cause to believe was being violated by the Authority. The  
12 Authority's Contracts Code, Article 5, sections 5.11(a)(3)(4)(5)(6)(8) and section 5.18(a) were  
13 also a basis for the Plaintiff to have reasonable cause of violation by the Authority. The Plaintiff  
14 regularly worked with these Codes and regulations and expected the Authority to follow them.

15 19. By November 2005 the Vice President to whom the Plaintiff reported was well  
16 aware that the Plaintiff would be leaving early in December for a planned vacation out of  
17 state. On the late afternoon of December 1, 2005 the Plaintiff met with the Vice President of  
18 Operations to see if there were any matters that needed to be attended to before the start of his  
19 vacation. The Vice President of Operations advised the Plaintiff that talks of "reorganization"  
20 had "resurfaced" but that final outcome of any "reorganization" would be determined by Thella  
21 Bowens (Doe No. 1) and the Authority Administration.

22 20. On December 6, 2005 while on vacation the Plaintiff received a telephone call  
23 from the Vice President of Operations, who was clearly upset, and who informed him of  
24 the specifics of the plan of the reorganization. Both the responsibilities of the Vice  
25 President and those of the Plaintiff were severely diminished. Over two-thirds of the  
26 Authority employees had reported to the Vice President's office: now he had been  
27 reassigned Chief of Staff for Thella Bowens (Doe No.1) even though no one reported  
28 to him in that assignment.. He was permitted to keep the title of Vice President. .

1 21. Vice President Bryan Enarson had convinced Thella Bowens (Doe No. 1) to  
2 relieve him from the problems he had created as the Vice President of Development  
3 (including the unresolved monetary havoc he had negotiated with the properties of  
4 Jim's Air, General Dynamics, and Teledyne Ryan) and reposition him in a position with  
5 Terminal Operations and other responsibilities.

6 22. On December 7, 2005 the Plaintiff participated in a single telephone conference  
7 call to discuss the Authority's reorganization specific to Parking and Ground Transportation.  
8 The Authority no longer has a person with expertise managing those  
9 positions. On December 8, 2005 all Authority employees were informed by e-mail that the  
10 reorganization would take effect on January 3, 2006.

11 23. On December 14, 2005 the Plaintiff was requested to attend a meeting with two  
12 individuals, an attorney with LUCE FORWARD and an investigator hired by LUCE  
13 FORWARD. Neither of the individuals informed the Plaintiff of what the purpose of  
14 their meeting was with the Plaintiff. The attorney asked a number of vague and a  
15 number of specific questions, interviewing the Plaintiff and asking him if he had requested or  
16 taken personal gifts from any company at the airport (No); if he had  
17 requested airline tickets from any airline (No); if he had requested first-class  
18 upgrades from airlines (No); if he had attended a wedding in Jacksonville, Florida (No);  
19 if he had received money from an airport vender (Never) and if he knew of other  
20 employees at the airport that accepted gifts or items of value (Yes). The questions did  
21 not include follow-up inquiries to the information regarding his knowledge of other  
22 employees who had in fact accepted gifts or items of value. The attorney's questions were  
23 asked in a hostile and unprofessional manner and the Plaintiff knew that the attorney had been  
24 hired specifically to find some wrong-doing on his part. Following this odd  
25 interrogation the Plaintiff was told by two Vice Presidents that he was being put on Paid  
26 Administrative Leave "until an investigation could be completed." He was also told  
27 specifically that he could not discuss anything related to this interrogation or "the  
28 investigation" with anyone else. Under California Labor Code section 1102.5 an employer may

1 not make or enforce any rule or policy preventing an employee from  
2 disclosing information to a government agency, including the Authority, where the employer  
3 has reasonable cause to believe that the information discloses a violation of  
4 state statute, or a violation or noncompliance with a state rule or regulation.

5 The Plaintiff asked the Vice Presidents to clarify the specific charges but they refused to  
6 do so.

7 24. The attorney from LUCE FORWARD and his hired investigator then began to  
8 contact various people of the Plaintiff's acquaintance. These witnesses immediately contacted  
9 the Plaintiff to complain about the hostile, rude and demanding treatment of the attorney from  
10 LUCE FORWARD and the Plaintiff informed each witness that he was  
11 unable to discuss anything regarding the matter, but all of the contacting witnesses  
12 reported similar unprofessional treatment and reported their own conversations and  
13 attempts at conversation with the lawyer from LUCE FORWARD. The lawyer seemed  
14 to be fishing to find anything he could about the Plaintiff that might put him in a negative  
15 light, and by all accounts he seemed to be failing. The lawyer from LUCE FORWARD was  
16 reduced to "suggesting" various scenarios to the witnesses, some of whom  
17 laughed at the lawyer and concluded he was engaged in a "witch hunt" to do harm to the  
18 Plaintiff. The Plaintiff, unable to respond and tell the contacting witnesses anything, was  
19 unable to defend himself. The Plaintiff knew what Thella Bowens (Doe No.1) was  
20 doing to him and why she was doing it but could not disclose anything about it.

21 25. As the attorney for LUCE FORWARD became more desperate to find some  
22 wrong doing from people who did not want to see the Plaintiff harmed, he utilized the Private  
23 Investigator to go after tangential subjects and try to get some "hard evidence" that the Plaintiff  
24 had done something, anything, wrong. The attorney for LUCE FORWARD sent the  
25 investigator over to the car repair place the Plaintiff used and  
26 threatened and coerced the owner to give him copies of the repair bills for the Plaintiff's car.  
27 The investigator specifically represented himself as working for the Authority and not for  
28 LUCE FORWARD. The Plaintiff had never been asked to produce these car

1 repair bills and did not give his permission to the owner of the repair place to give them  
2 to the investigator or to anyone else. The investigator produced the documents in front  
3 of the attorney for LUCE FORWARD and in front of the Plaintiff. The investigator and  
4 the attorney for LUCE FORWARD refused to say where they had obtained them. In fact, it was  
5 the witness who called the Plaintiff and told him about the incident. The car repair  
6 bills yielded no evidence of wrong doing by the Plaintiff.

7 26. Next the attorney for LUCE FORWARD questioned witnesses about what they  
8 knew about the Plaintiff's marriage, including whether they had observed "communication"  
9 problems in the marriage. The witnesses quickly defended the  
10 Plaintiff's marriage and quickly informed the Plaintiff of the attorney's specific  
11 invasion into the Plaintiff's marriage and informed him that it was a great marriage and asked  
12 the Plaintiff why this attorney was asking questions that had nothing to do with the Plaintiff's  
13 job and were also none of his business.

14 27. On February 7, 2006 the Plaintiff was called into a meeting by his former  
15 Vice President of Operations and told they were here to "discuss the disposition of  
16 of the recent investigation concerning possible misconduct on your behalf." The Plaintiff was  
17 specifically told that he was unable to leave the meeting until a decision had been made  
18 regarding his employment status and that he did not have the right to discuss the matter with  
19 anyone regarding his options. The former Vice President had prepared a written outline  
20 reference which he claimed would show the Plaintiff that "it was no witch hunt." The Plaintiff  
21 vehemently objected and told him that the 'investigation' "was just that: a witch hunt aimed at  
22 specifically terminating my employment' with the Authority" and "the point was made clear to  
23 me by the was the 'investigation' was conducted and through the questions asked by the  
24 'investigators'." The Plaintiff asked the former Vice President if it was his opinion that the  
25 Plaintiff had asked for favors in exchange for 'gifts.' The former Vice President then reiterated  
26 his statement that the 'investigation' had concluded that there was no Quid Pro Quo. The former  
27 Vice President then stated that "the reason for such an extensive 'investigation' was to assure  
28 the Authority that there were no signs of criminal activity from [the Plaintiff's] behavior." The

1 Plaintiff asked him if there was and the former Vice President stated: "to date" no evidence to  
2 support this allegation could be found

3 The former Vice President and the Plaintiff then discussed the Authority Policy  
4 concerning "Conflict of Interest". He specifically singled out one airline for his  
5 acceptance of a comp stand-by ticket, available by the airline to the general public.

6 28. Plaintiff then pointed out his points of concern to the former Vice President: (1)  
7 the ambiguousness of the "Conflict of Interest" Code, and (2) more importantly, the  
8 application of the policy among Authority employees. The Plaintiff mentioned the specific  
9 abuse of the policy from the Authority Vice Presidents, Board Members, and  
10 the President/CEO Thella Bowens (Doe No.1) This included airline ticket changes, upgrades,  
11 access to First Class lounges and other routinely-demanded expensive  
12 privileges not allowed to other Authority employees. The Plaintiff pointed out to the  
13 Vice President that the application of the "Conflict of Interest" Code policy was  
14 selective and unfairly enforced. SDCRAA Code of Ethics Article 2, part 2 et.seq.

15 29. The Plaintiff had discussed such items as the above-stated violations of the  
16 Authority's policy with the former Vice President when he had been the Vice President  
17 and the Plaintiff's supervisor and he had always seen no reason for concern, and no  
18 action had been taken. This same former Vice President had himself directed the Plaintiff  
19 to take care of tickets for Authority employees and Board Members. The Plaintiff asked  
20 why it was okay for Thella Bowens (Doe No.1) to ask and receive favors and not okay  
21 for employees to receive the same benefits. One example was Bowen's request to fly in  
22 in BBQ meat from Texas. The former Vice President defended this practice as  
23 approved as an "Accepted Industry Practice", which connotes that among the Regional  
24 Airport Authority for the Counties paying to fly in meat from another state is a billable  
25 expense .SDCRAA Code of Ethics Article 2, section 2.10 (d)(9)(A)(B)

26 30. The former Vice President then told the Plaintiff that the Authority could no longer trust  
27 his judgment and they are "forced to discontinue working relations."  
28 His "choice" was to sign a resignation or they would terminate him. When the former



1 Vice President, now Chief of Staff to Thella Bowens (Doe No.1), asked the Plaintiff for  
 2 final comments he told him his opinion as to the unfairness of the 'investigation' and the lack  
 3 of professionalism on the part of the 'hired help' (the lawyer from LUCE FORWARD and the  
 4 'investigator' he hired). The Plaintiff stated that the outcome of the  
 5 investigation had already been pre-determined and that the 'investigators' were not impartial  
 6 and did not let the 'truth come out.' The Plaintiff asked the following questions, all of which  
 7 went unanswered: How did this 'investigation' come about? Why were the allegations made  
 8 against him never explained? Why was the reasoning behind being placed on administrative  
 9 leave never disclosed? Am I the only person being 'investigated' or are there others? What  
 10 authority was given to the 'investigators' to allow them to invade my privacy and procure  
 11 privileged information? The former Vice President's last comment to the Plaintiff was: "Holy  
 12 shit, I knew something like this would happen as part of the reorganization."

13 31. The policies of the Authority are published and distributed to all employees and Board  
 14 members. Specifically, these policies state: that (a) Public officials, both elected and appointed,  
 15 shall comply with both the letter and the spirit of the laws affecting the operations of  
 16 government; (b) Public officials shall be independent, impartial and fair in their judgment and  
 17 actions; (c) Public office shall be used for the public good, not for personal gain;." SDCRAA  
 18 Policies Art. 2 Ethics, Part 2.0; Section 2.01 POLICY STATEMENT The Authority then  
 19 adopted a Code of Ethics and Conduct and specifically designated that the "employees"  
 20 includes "the Authority's Executive Director" [Thella Bowens, Doe No.1] General Counsel  
 21 [Bret Lobner] "other officers and consultants." Further, "This Ethics Code shall be broadly  
 22 construed to effectuate its purposes." The citizens served by the Authority "are entitled to fair,  
 23 ethical and accountable . . . government." Code of Ethics, Art. 2, Part 2.0, Section 2.01

24 32. The Authority has enacted specific standards of conduct that include the  
 25 following: Ethics Code Art. 2, Part 2.0, Section 2.02 "Act in the Public Interest" requires  
 26 "[e]mployees of the Authority will work for the common good of the people of the County of  
 27 San Diego and not for any private or personal interest. . . ." Under the Code of Ethics, Art. 2,

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Part 2.0, Section 2.10 "Prohibited Receipt of Benefits" (a) "Benefit" means any honorarium, gift or travel expense made to, or in the interest of, an individual or a member of the individual's immediate family." (2) "Gift" means any payment that confers a personal benefit on the recipient . . . *unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.*" The standard airline issued trip pass which is used when ticketing employees, other airline personnel and non-employees authorized for non-revenue travel ticket given to the Plaintiff is only valid for ninety days and the seats are limited because it is a stand-by ticket. All airlines have the autonomy to give them to anybody and is routinely given in the regular course of business to members of the public "without regard to official status." There was no requirement for the Plaintiff to report the gift of a stand-by complementary ticket whether it was used or not. In order to be a "benefit" the recipient must know that the rebate or discount is not made in the regular course of business to members of the public. Ethics Code, *supra*, I (4)(d)

33. The Authority did not follow the Ethics provisions that governed it. There was no enforcement of the policies or code when violations blatantly occurred, particularly by the Authority President and her Vice Presidents, or by the Board members. It wasn't until Bowens and Enarson determined that they would get rid of the Plaintiff were accusations of violations of the ethics provisions made against the Plaintiff. The "investigation" initiated by Bowens was a selective enforcement of ethics provisions that singled out the Plaintiff for retaliation because he had complained and disclosed matters that he believed were violations of law. The Authority's Ethics Code Art. 2, Part 2.0, Section 2.10 contains specific Restriction on Benefits under (b) (1) No Board member or employee of the Authority shall request a benefit from any person or entity or accept any benefit intended to influence official duties. (B)(2) No Board member or employee of the Authority shall accept anything of value from anyone, other than the Authority or another Board member or employee, for doing his or her job. Violations of the above-stated Ethics Code, Sections 2.01; 2.02; and 2.10 occurred during the Plaintiff's employment as a Director with the Authority including, but not limited to the

1 following incidents:

2 a. The Vice President of Operations paid \$1200.00 for a ticket on an airline  
3 to get Blue Bell ice cream for Thella Bowen's BBQ, received reimbursement for the  
4 travel expense under the guise that he was attending a cultural awareness development meeting  
5 with another airline. The ice cream was available in Southern California. When word got  
6 around the Authority about the cost of going to Texas for ice cream, the Vice President directed  
7 the Plaintiff to "shut that little shit up" referring to the budget analyst who continued to  
8 comment on it. The Plaintiff refused the directive. This travel expense was not reasonably  
9 related to a governmental purpose.

10 b. Each time an Authority employee requested a change to be made to an  
11 airline ticket a benefit was accepted when the recipient took "any action exercising control over  
12 the benefit." Thella Bowen would purchase her own tickets and then request date changes and  
13 upgrades, along with Premier Lounge Access (only permitted for airline premier club  
14 members). This practice was so prevalent by Bowens and her staff that on the day that the  
15 investigation of the Plaintiff began, Bowens had secured access to an airline Premier lounge  
16 prior to her trip to Asia. Any change to any ticket itinerary is approximately fifty to one  
17 hundred dollars, a service charge, plus the cost in set price for an upgrade on a ticket, ranging  
18 from one hundred fifty to two hundred dollars each way. Thella Bowens routinely instructed her  
19 Assistant to contact either the Plaintiff or the Vice President that the Plaintiff reported to, to  
20 make the changes described above. The Plaintiff would make the changes for Bowen by going  
21 directly to the airline Station Manager and requesting the change for Thella Bowens. The  
22 Plaintiff performed this benefit accommodation more than thirty times for Bowen and her staff.  
23 All of these requested benefits were in violation of the Ethics policy.

24 c. Each year Thella Bowens requested an employee BBQ named "Thella's  
25 BBQ." The event drew from fifty to over three hundred attendees. The centerpiece of the event  
26 called for pork, beef ribs and brisket to be flown out from her favorite restaurant in the Dallas  
27 Fort Worth area, Angelo's. Employees from the Director level and above were required to pay  
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1 money to help subsidize the expense of the meat. Currently Thella's BBQ has been renamed  
2 the "Annual Employee Appreciation Employees BBQ" and now costs approximately ten to  
3 fifteen thousand dollars, not including the cost of the labor for the Authority employees who are  
4 designated to support the event. The Plaintiff was then instructed to contact an airline to make  
5 arrangements at her behest for free airline delivery of the meat. The net weight of the total  
6 delivery was over two hundred pounds at an approximate cost of \$2500.00. The free airline  
7 flight of the meat violated the Ethics policy. The cost of the BBQ comes from the revenue  
8 collected by the Authority from the airlines and its users.

9 d. Thella Bowens requested through a Vice President that he obtain special  
10 airline flight privileges for her sister who lives in Texas. Bowens asked for the ability to get  
11 either stand by or reduced rate tickets for her sister for business and personal travel. The  
12 request was made to the airline Station Manager. The airline Station Manager then responded  
13 to the conditions under which they could do it. This request by Thella Bowens (Doe No.1)  
14 violates the Ethics Code.

15 e. The request from the Chairman of the Board of the Authority to secure  
16 First Class upgrade airline tickets on the day of his planned departure for his wife and himself  
17 required the intervention of the airline Station Manager. This tactic allowed the Chairman of  
18 the Board of the Authority to save approximately two hundred fifty dollars for the upgrade  
19 expenses. This action violates the Ethics Code.

20 f. The Chairman of the Board of the Authority on several occasions  
21 requested to enter into a temporary lease to use a portion of the parking lot at Harbor Island for  
22 no expense for an activity he is involved with annually. The lease of Authority property for  
23 non-aviation use is strictly prohibited and a violation of the Ethics Code as  
24 well as other laws and regulations.

25 g. An Authority Board member annually inserts his official authority to  
26 influence negotiations between a community event and the rental of the General Dynamics  
27 property at a rate lower than the fair market value. As a condition of this use, all rental cars  
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1 must be removed from the property and a large amount of vehicles relocated from the property.  
2 This violates the Ethics Code as well as other laws and regulations.

3 h. An Authority Board member requested assistance in rearranging his  
4 itinerary so that he could attend the Little League World Championships in Williamsport,  
5 Pennsylvania. The Plaintiff had to work with three different airlines to coordinate the First  
6 Class upgrade the Board member requested, as well as the time changes to allow the Authority  
7 Board member his desired schedule. This violates the Ethics Code.

8 I. The Authority's Vice President of Budget and Finance repeatedly requested from  
9 the Plaintiff assistance in changing flight schedules. Over a one year period the Plaintiff  
10 assisted with the change of approximately fifteen to twenty schedules, all to accommodate  
11 personal and non Authority business travel to Las Vegas and Texas.  
12 This violates the Ethics Code.

13 j. The General Counsel of the Authority Bret Lobner used his official position to  
14 obtain fifty-yard-line premier seating at the Poinsettia Bowl football game by getting the  
15 Plaintiff to use his official position as Director, Landside Operations to make contact with the  
16 Holiday Bowl Committee and request premium seating for the event. This involved securing  
17 six tickets for \$300.00, which the Plaintiff paid for so that the General Counsel Bret Lobner had  
18 to reimburse the Plaintiff. When the Holiday Bowl Committee member asked the Plaintiff if  
19 the tickets were complimentary for no charge the Plaintiff refused the gift and paid for them.  
20 The General Counsel Bret Lobner knew he was in violation of the Ethics Code when he made  
21 the request for the favors from the Plaintiff.

22 After the Plaintiff filed his Claim with the Airport Authority, the General Counsel Bret  
23 Lobner wrote to the Plaintiff that "the facts about me are false, misleading, defamatory,  
24 slanderous, libelous" because the number of tickets he requested was six, not eight, and the  
25 price he paid for the tickets was \$300.00 not \$400.00. Lobner then threatened to pursue legal  
26 action against the Plaintiff for "filing a false defamatory accusation against [him]" because "Mr.  
27 Hernandez had volunteered to pick up the tickets since he already had plans to visit the ticket  
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1 the ticket [sic] location", a statement which is untrue. The General Counsel Bret Lobner's  
2 threat is an additional and separate violation of the Ethics Code.

3 k. The Plaintiff was present with the Vice President of Operations when the  
4 Chairman of the Board of the Authority requested a contractor to be hired to re-survey  
5 his Authority office space for "listening devices." The Chairman's office space had previously  
6 on two separate occasions been surveyed for "bugging devices" or other "listening apparatus."  
7 The Chairman was worried that his communications could be intercepted by the FBI or similar  
8 such agencies. This contract request is a gross waste of the Authority funds.

9 l. The Vice President of Budget and Finance, representing himself and  
10 Thella Bowens as Board members of the Jackie Robinson YMCA, requested that the Plaintiff  
11 secure a free round trip airline ticket for the owner of national basketball team.  
12 The request was made so that the owner could be the featured speaker at a banquet.

13 m. The Vice President of Operations with the full knowledge of Thella  
14 Bowens, requested that the Plaintiff secure free round trip airline tickets to be donated  
15 as the featured prizes of the annual United Way campaign. The Plaintiff did this twice.

16 n. Thella Bowens requested from the Plaintiff that a marked reserved parking  
17 stall be designated in the employee parking lot at the Commuter Terminal for her personal use.  
18 Bowens then never used the stall, choosing to park elsewhere and  
19 she reassigned the stall to the Vice President of Budget and Finance. That particular  
20 reserved parking staff is clearly marked for use only by the President/CEO of the  
21 Airport Authority. The designation of the parking stall to the Vice President of Budget and  
22 Finance clearly connotes preferential treatment and is a violation of Airport Authority rules and  
23 regulations.

24 o. The Vice President of Operations instructed the Plaintiff to use his  
25 position as Director of Landside Operations to secure a limousine from one of the Airport's  
26 service providers to be used as part of the procession for a colleague's wife's  
27 funeral.

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1 34. Under the Authority's Ethics Code found in Article 2, et seq.: "No Board member  
 2 or employee of the Authority shall use or threaten to use any official power or influence to  
 3 discourage, restrain or interfere with any other person for the purpose of preventing such person  
 4 from acting in good faith to report or otherwise to bring to the attention of the Board *or any*  
 5 *other appropriate agency, office or department* any information which, if true, would  
 6 constitute:

7 (1) a work-related violation by a Board member or employee of any law or regulation,  
 8 including this Ethics Code;

9 (2) a gross waste of Authority funds;

10 (3) a gross abuse of power;

11 (4) a conflict of interest of a Board member or employee; or

12 (5) No Board member or employee of the Authority shall use or threaten to use any  
 13 official authority or influence to effect any action as a reprisal against a Board member or  
 14 employee who reports or otherwise brings to the attention of the Board or other appropriate  
 15 agency, office or department, any information regarding the subjects described in Subsection (a)

16 The Plaintiff attempted, time and time again, to bring to the attention of the  
 17 attorney from LUCE FORWARD the above-stated Ethics violations and every single time the  
 18 attorney from LUCE FORWARD interrupted and spoke over the Plaintiff to prevent the  
 19 Plaintiff from reporting violations, both legal and ethical, that he was aware of and had not been  
 20 'investigated.' The attorney was not interested in knowing about the above-stated violations or  
 21 any incident that did not show wrongdoing by the Plaintiff. The Plaintiff did his best to report,  
 22 disclose, divulge and bring to the attention of his employer's 'investigator' (the attorney from  
 23 LUCE FORWARD) facts and information relative to both suspected and actual violations of  
 24 state law directly related to his job. The Plaintiff observed improper governmental activity by  
 25 employees of the Authority undertaken in the performance of the employee's official duties that  
 26 demonstrated economic waste, incompetency and inefficiency. The 'investigator' Thella  
 27 Bowens hired (the lawyer from LUCE FORWARD) attempted to use and used, both directly  
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1 and indirectly, intimidating, threatening, coercing, and commanding tactics to influence the  
2 information he was told by the Plaintiff and by the witnesses during their interviews.  
3 Thella Bowens could not have reasonably believed that taking personnel action, including  
4 hiring and directing an 'investigation' into the Plaintiff's alleged but not articulated violations  
5 of the Authority's Ethics policy was and is justified based on her own and her direct report  
6 employees' own well-know violations of the same policies and Codes. Bowens was well aware  
7 that the evidence of her own violations were known to the Plaintiff and when he reported those  
8 violations to her hired 'investigator' he was cut off and told not to discuss them. Other  
9 witnesses also disclosed to Bowen's 'investigator' knowledge of Bowen's wrongdoing as well  
10 as the Ethics violations by her Vice Presidents that Bowens condoned and ratified.

11 35. The Plaintiff contends he disclosed a number of legal violations for which the Authority  
12 retaliated against him.

13 The first disclosure arose from the Plaintiff's opposition to a "side deal" that Bryan  
14 Enarson made with a concessionaire at the airport, Host, that restricted the Authority's ability to  
15 annex the space needed to comply with ADA requirement for the  
16 women's restroom at the airport.. The result of Enarson's actions increased the project budget  
17 by over \$2 million. The Plaintiff believed this resulted in legal noncompliance with the ADA  
18 requirements that demand access for disabled individuals which were well settled at that time  
19 and took precedence over the handshake agreement Enarson made without negotiation with  
20 Host.

21 The second disclosure also arose from events involving Enarson, who was the lead  
22 negotiator on behalf of the Airport for the property known as the General Dynamics property.  
23 Enarson proceeded with the negotiations without ascertaining the extent of the "public hazards  
24 around the airport" and resulted in a lease agreement that loses millions of dollars per year for  
25 the Authority.

26 The third disclosure involved the misuse and waste of the usable land around the  
27 property known as the Teledyne Ryan property. Enarson proceeded with the negotiations  
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1 without ascertaining the extent of the "public hazards around the airport" and that resulted in a  
2 lease agreement that loses millions of dollars per year for the Authority. Enarson then blocked  
3 open discussion of the problem and no resolution has been attempted.

4 The fourth and final disclosure encompassed the issue of the contract bid by the  
5 Lindbergh Parking, Inc. (LPI) and its failure to meet its contract expectations and the  
6 offenses and actions by the LPI that indicate a lack of business integrity.

7 The Plaintiff believes it was the personal relationship of the President/CEO of the  
8 Authority, Thella Bowens (Doe No.1) who has shown favoritism, partiality and a refusal to  
9 hold those of the same minority race as herself to the same accountability as the Ethics Code  
10 and other laws and regulations require. Besides Enarson, who is white, and a  
11 premier kiss ass, Bowens has never applied the same policy standards to herself or to her  
12 Vice Presidents who are black. Maurice Gray is black and is the beneficiary of not having to  
13 comply with the standards and requirements that other Authority contractors have been held to.  
14 By eliminating the Plaintiff from his job she has assured that no one else surrounding her at the  
15 high management levels will speak up or oppose whatever it is she desires to do, both  
16 personally and in her job position. Thella Bowens (Doe No.1) made it clear through the  
17 attorney she hired from LUCE FORWARD and through the investigator the attorney hired that  
18 she alone would make the determinations as to conclusions and findings of the two. Bowens  
19 (Doe No.1) met on a regular, if not daily basis, with the two she hired and reviewed their  
20 "findings" and personally directed them in their 'work', including their 'work' that invaded the  
21 Plaintiff's privacy and had no relation whatsoever to the Plaintiff's job or his job performance.

22 36. The Ethics Code, Art. 2, Part 2.0, Section 2.05 (a) requires that : "Board members  
23 and employees of the Authority shall comply with the laws of the . . . State of California and the  
24 ordinances, codes, rules and regulations of the Authority in the performance of their public  
25 duties. . . ." Section 1.17 (a) of the Ethics Code provides: "Whenever in this Code any act or  
26 omission is made unlawful, it shall include causing, permitting, aiding or abetting such act or  
27 omission." Under these laws, all employees, including Thella Bowens (Doe No.1) and her Vice  
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1 Presidents and Directors who participated in acts that violated the Ethics Code, whether by  
2 requesting them, directing them, condoning them or ratifying them, are "causing, permitting,  
3 aiding or abetting" the acts.

4 37. The Plaintiff believed in good faith that LPI was in violation of California Public  
5 Contracting laws found in the California Public Contract Code Section 100 et seq. The  
6 discovery that LPI had presented false expenses in its bid submission, combined with the  
7 unsatisfactory performance of the contract, its failure to submit insurance documents and its  
8 lack of business integrity when given time and opportunities to correct its wrongdoing seriously  
9 affected the reliability and credibility of the performance of LPI. The final deadline for  
10 Maurice Gray to submit a job description that detailed the duties he performed as President of  
11 LPI to justify his salary of \$60,000.00 was quickly approaching when Thella Bowens (Doe  
12 No.1) made the decision to begin an 'investigation' of the Plaintiff. Bowens wanted Maurice  
13 Gray to continue in that position, partly because he was black, and she favored protection of the  
14 black employees, but also because she did not want anyone, including the Plaintiff, to speak up  
15 and oppose whatever decisions she made, whether they involved misuse of government funds  
16 as the Plaintiff believed when he opposed and objected to the leases that cost the Authority  
17 millions of dollars for nothing in exchange. Over and over again the Plaintiff voiced his  
18 opinions that waste of money occurred when Enarson, with Bowen's approval, failed to  
19 consider the budget and its inability to sustain payments when no revenue could be generated  
20 from projects improperly negotiated and Bowen's refusal to address those problems. LPI was  
21 the last straw for Bowens. The Plaintiff believed that Bowens and her Vice Presidents were  
22 using favoritism as a form of corruption in the LPI contract. There is no other "justification"  
23 for the timing, the identity of the retaliations, and the secretive and calculated course of conduct  
24 that Bowens called for choosing to 'investigate' the Plaintiff at that time. Bowens cannot show  
25 independent reasons for her hiring of an 'investigator' that demonstrates clear and convincing  
26 evidence that she would have conducted an 'investigation' if the Plaintiff had not engaged in  
27 protected disclosures or refused to participate in suspected and actual violations of state law

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1 governing public contracts.

2 38. The Ethics policies and Code are not uniformly followed, enforced or used by  
3 Authority management. The Plaintiff was singled out because he opposed and objected on  
4 numerous occasions to the actions of the Authority's President/CEO Thella Bowens and her  
5 Vice Presidents when he believed he had reasonable cause to believe that the opposition was  
6 necessary to disclose a violation of state statute, or a violation or noncompliance with a state  
7 statute, rule or regulation. The Authority, as the Plaintiff's employer, retaliated against the  
8 Plaintiff for having exercised his rights under Labor Code section 1102.5(a)(b) ( c).

9 39. Thella Bowens (Doe No.1) hired an attorney from LUCE FORWARD and he  
10 hired an investigator to supposedly look into "allegations" of violations of the Ethics policy and  
11 Code by the Plaintiff. There is nothing in either the Ethics policy or the Ethics Code of the  
12 Authority that invites "investigating" anything in regard to his marriage. The Plaintiff's private  
13 life, including his marriage, has nothing to do with his job duties, his job position or any matter  
14 that is of any concern to the Authority or to Thella Bowens personally. The attorney from LUCE  
15 FORWARD hired by Thella Bowens and the investigator hired by the attorney from LUCE  
16 FORWARD are both subject to the Authority's Ethics policies and to the Ethics Code of the  
17 Authority, as both were hired by Thella Bowens on behalf of the Authority as consultants to her  
18 and the officers of the Authority with whom she shared the decision making of the  
19 'investigation.' In addition, Thella Bowens and all of those with whom she shared the  
20 'investigation' responsibilities were and are charged with knowledge of the Ethics policies and  
21 Ethics Code of the Authority.

22 40. The interrogation of witnesses as to their observations, personal knowledge or opinions  
23 regarding the Plaintiff's marriage, including communication within his marriage, the manner of  
24 communication between the Plaintiff and his wife, the appearance of the marriage to outsiders,  
25 and any other matters that the attorney for LUCE FORWARD and his hired investigator made  
26 regarding the Plaintiff's marriage from witnesses who were being interviewed regarding an  
27 'investigation' whose subject matter had not been revealed to the Plaintiff was intentionally

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1 intruded in by the hired help of the Authority. The intrusion of the Authority's 'consultants' and  
2 the stated discussion regarding the findings of the 'consultants' with the Authority management  
3 on a regular basis that included findings of the interrogation of witnesses on the subject of the  
4 Plaintiff's marriage was highly offensive to the Plaintiff.

5 41. The investigator hired by the attorney from LUCE FORWARD coerced the owner of the  
6 car repair shop (where the Plaintiff had his car repaired) to hand over copies of car repair  
7 records and invoices showing payment of the car repairs. The owner immediately contacted the  
8 Plaintiff to explain that the investigator told him he was hired by the Authority to look into the  
9 Plaintiff's records and threatened him with legal proceedings if he did not immediately turn over  
10 the records to him. The owner protested and opposed the demand but was coerced into  
11 providing the records by the investigator. Neither the Authority, the attorney for LUCE  
12 FORWARD or the investigator had sought permission from the Plaintiff to obtain or look at  
13 those private records. The Plaintiff was furious at the intrusion into his private affairs without  
14 his knowledge or permission. Given the instruction that he could not tell the owner what the  
15 circumstances of the invasion into his privacy meant, the Plaintiff was further denied the  
16 opportunity to defend himself from the accusations made by the Authority. Once again, the  
17 Plaintiff was left in a position of not knowing himself the reason for the 'investigation' and the  
18 embarrassment that this investigator could act to further leave the Plaintiff in another position of  
19 looking like he had done something wrong when he had not.

20 42. The circumstances surrounding the Authority's "investigation" were part of a calculated  
21 scheme to find some violation that could "justify" the termination of the Plaintiff because he had  
22 made disclosures regarding the Authority's operations and budget that he believed were illegal  
23 and would prevent the Plaintiff and others from reporting similar violations by the Authority and  
24 allow the Authority to continue to operate in whatever manner it desired to do so regardless of  
25 the consequences to the budget of the Authority.

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2 43. The Plaintiff was forced to resign his position from the Authority because he  
3 had disclosed in good faith to his own Authority, a government agency, the violations of the  
4 Authority regarding its misuse of money, waste of government funds, the violations of law  
5 regarding four projects of which he had personal knowledge of the violations of law and rules  
6 and regulations that the Authority violated repeatedly.

7 44. The Plaintiff absolutely made clear his opposition in private meetings, in public  
8 meetings, and at open door and closed door meetings, to the failure of the Authority  
9 to implement the annexation of the space needed to have the women's restroom comply with the  
10 ADA requirements to provide access to disable travelers and to complete the project at a  
11 reasonable cost and in a timely manner. The American Disabilities Act and its enabling statutes  
12 and regulations are federal law and federal regulations.

13 45. The Plaintiff made clear to the Vice President to whom he reported that he  
14 objected and opposed during the negotiations and the due diligence process that Enarson  
15 ( Vice President and confidante to Thella Bowens ) was not properly understanding the lawful  
16 use and conditions of the General Dynamics property that resulted and continues  
17 to result in losses of millions of dollars for the Authority in violation California Public Utilities  
18 Code section 170056(f)(1)(2)(3)

19 46. The Plaintiff disclosed and opposed the misuse and waste of the unusable land  
20 around the Teledyne Ryan property at Capitol Improvement meetings, at weekly  
21 Operations meetings, at Directors meetings and other times that the acts violated the California  
22 Public Utilities Code section 170056(a)(1)(B)

23 47. The Plaintiff conducted numerous disclosure meetings with the Vice President  
24 to whom he reported regarding the failure of LPI to meet the expenses and conditions that the  
25 company had used to bid on the parking operations contract in violation of California Code of  
26 Contracts section 1100; section 100. The Plaintiff also met repeatedly with Maurice Gray of LPI  
27 and gave him extended help and time to come into compliance on the contract and he failed and  
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1 refused to do so. This correlated with the idea of conducting an 'investigation' of the Plaintiff  
2 rather than of the contractor.

3 48. The conduct of the Defendants was a substantial factor in causing the Plaintiff's  
4 harm.

5 49. As a direct and proximate cause of the acts and conduct described above, Plaintiff  
6 has been and continues to be subjected to shame, humiliation and extreme emotional distress, all  
7 to the Plaintiff's damages in a sum as yet undetermined, and Plaintiff requests leave of court to  
8 state such damages in accordance with proof at trial.

9 50. As a direct and proximate cause of said acts of harm and conduct against the  
10 Plaintiff by Defendants and DOES 1 through 20 the Plaintiff has lost standing in his community,  
11 been held up to ridicule and shame, suffered great mental and emotional distress, worry, fear of  
12 his economic future and depression, all to the Plaintiff's  
13 damage in a sum that cannot be computed at this time, and the Plaintiff requests leave to amend  
14 this complaint to state those damages in accordance with proof at trial.

15

16 WHEREFORE, Plaintiff JOSE HERNANDEZ respectfully prays this court:

- 17 1. For general damages according to proof;  
18 2. For attorneys fees and costs on this suit pursuant to CCP Section 1021.5;  
19 3. For such other and further relief as the court deems just and proper.

20

21 Dated: March 26, 2007

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CATHRYN CHINN, Attorney for  
Plaintiff Jose Hernandez



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**F I L E D**  
Clerk of the Superior Court

MAR 29 2007

By: C. BANKS, Deputy

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18 Attorneys for Defendant  
19 SAN DIEGO COUNTY REGIONAL AIRPORT  
20 AUTHORITY

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 COUNTY OF SAN DIEGO

23 JOSE HERNANDEZ,

24 Plaintiff,

25 v.

26 SAN DIEGO COUNTY REGIONAL  
27 AIRPORT AUTHORITY, a public entity;  
28 and DOES 1 through 12, inclusive,

Defendants.

CASE NO. GIC 871979

**REPLY BRIEF IN SUPPORT OF  
DEFENDANT SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY'S  
DEMURRER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT AND/OR  
MOTION TO STRIKE**

Date: April 6, 2007  
Time: 9:30 a.m.  
Dept: 71  
Judge: Hon. Richard E. Strauss  
Complaint Filed: September 1, 2006  
Trial Date: Not Set

**EXEMPT FROM FEES  
GOVT. CODE § 6103**

PAUL, PLEVIN,  
SULLIVAN &  
CONNAUGHTON LLP

REPLY BRIEF IN SUPPORT OF  
DEMURRER/MOTION TO STRIKE

CASE NO. GIC 871979

**COPY**

## I. INTRODUCTION AND SUMMARY OF ALLEGATIONS

Plaintiff Jose Hernandez essentially concedes that the Authority's demurrer to the second through fourth causes of action in his First Amended Complaint ("FAC") is well-taken because Hernandez makes no argument in his opposition regarding those causes of action and the proposed Second Amended Complaint ("proposed SAC")<sup>1</sup> omits those causes of action. Therefore, the Authority respectfully requests that the Court sustain its demurrer to the second through fourth causes of action without leave to amend.

Hernandez' remaining cause of action under Labor Code section 1102.5 is also defective and Hernandez has not cured the deficiencies through the proposed Second Amended Complaint. Specifically, none of the four disclosures support a Labor Code section 1102.5 claim:

- Hernandez has not articulated how the Authority's General Dynamics lease violated any statute, rule or regulation when the financial terms of that lease are as dictated by the Public Utilities Code. Thus, Hernandez could not have had a reasonable belief that the lease violated any law;
- Hernandez has not articulated a law that he reasonably believed the Authority allegedly violated by entering into the Teledyne Ryan lease;
- Hernandez has not articulated a law that he reasonably believed the Authority allegedly violated with regard to the LPi contract either; and
- As a matter of law, the Authority increasing the restroom project expense cannot support a reasonable belief that the Authority violated the ADA or any of its implementing regulations.

In addition to the above deficiencies, the First Amended Complaint and proposed SAC contain numerous irrelevant and improper allegations as set forth in the Authority's notice of motion and motion to strike, which Hernandez has almost wholly ignored and failed to respond to.

For the foregoing reasons, and as more fully discussed in the Authority's supporting papers,

---

<sup>1</sup> Hernandez does not have the right to file his Second Amended Complaint without leave from the Court. (CCP § 473(a)(1).) The Authority references the proposed SAC throughout this reply in an effort to show that even the proposed amendment does not cure the deficiencies in Hernandez' FAC, and leave should not be granted.

1 the Authority respectfully requests that this court sustain its demurrer without leave to amend as to  
 2 each cause of action in the FAC. Leave to amend should not be granted because Hernandez'  
 3 proposed SAC that does not address or cure any of the deficiencies in the Labor Code section  
 4 1102.5 cause of action from the FAC. In the alternative, defendant moves to strike those allegations  
 5 that are barred by the various deficiencies as detailed in the notice of motion and motion to strike  
 6 the FAC. In the event that the Court gives Hernandez one more opportunity to amend, the  
 7 Authority requests that any stricken allegations be removed from the SAC as well.

## 8 II. DEMURRER AND MOTION TO STRIKE STANDARDS

### 9 A. Hernandez Must Plead with Specificity Because the Authority is a Public Entity.

10 Hernandez has not met his burden of pleading his material allegations with particularity, as  
 11 the law requires when a plaintiff seeks to impose liability on a public entity. (*Lopez v. Southern*  
 12 *Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.) As a result, the Authority's demurrer should  
 13 be sustained without leave to amend.

### 14 B. In the Alternative, this Court May Strike any Improper or Irrelevant Material

15 In the event that this Court does not sustain the Authority's demurrer to each cause of action,  
 16 the Court has the authority to strike any improper or irrelevant matter from the pleadings pursuant to  
 17 California Code of Civil Procedure sections 435 and 436(a). Not surprisingly, Hernandez almost  
 18 completely disregarded the Authority's bases for moving to strike improper and irrelevant  
 19 allegations of the complaint in his opposition. For example, paragraph 37 of the FAC, and each of  
 20 its subparts, contains allegations of alleged policy violations Hernandez did not "disclose" for  
 21 purposes of his Labor Code section 1102.5 claim. (Compare FAC ¶37 with FAC ¶39.) Further,  
 22 Hernandez cannot maintain a private right of action for these alleged ethics violations committed by  
 23 other individuals within the Authority because there is no private right of action under the  
 24 Authority's own Ethics Code. (See *Vikco Insurance Services, Inc. v. Ohio Indemnity Company*  
 25 (1999) 70 Cal.App.4th 55, 62-63, citing *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988)  
 26 46 Cal.3d 287, 294; *Arriaga v. Loma Linda University* (1992) 10 Cal.App.4th 1556, 1563-1564  
 27 [applying *Moradi-Shalal* and holding provisions of Government Code do not create private right of  
 28 action where statute showed no such intent].) Since Hernandez did not "disclose" these alleged



1 ethics violations and he cannot maintain a separate cause of action based on these alleged  
 2 violations, the allegations must be stricken as improper and irrelevant matter. (CCP §§ 435-436.)  
 3 This is but one example of irrelevant and improper allegations in the FAC, which are still contained  
 4 in the SAC, and for which Hernandez has not properly set forth a reason for those allegations to  
 5 remain in the complaint. For a complete listing of the improper and irrelevant matter, the Authority  
 6 refers this court to its detailed notice of motion and motion to strike.

7 **C. It is Proper for this Court to Sustain the Demurrer to the Labor Code section 1102.5**  
 8 **Claim**

9 Finally, Hernandez implies that sustaining a demurrer to his Labor Code section 1102.5  
 10 claim is improper because "whether or not an employee has 'reasonable cause' to believe the  
 11 disclosure was a protected disclosure is a question for the trier of fact." (Opposition 4:6-7.)  
 12 However, the case cited by Hernandez, *Green v. Ralee Engineering* (1998) 19 Cal.4th 66, does not  
 13 support Hernandez' proposition that "reasonable cause" is a question for the trier of fact. In fact,  
 14 *Green* actually supports the Authority's contention that the Court may determine as a matter of law  
 15 whether a plaintiff could have a reasonable belief. (*Id.* at p. 87.) In this case, Hernandez' own  
 16 allegations negate his legal conclusion that he could have had "reasonable cause" to believe he was  
 17 disclosing a violation of law, because the facts he has alleged compel the conclusion that such a  
 18 belief could not have been a reasonable one. Accordingly, it is proper for this Court to resolve the  
 19 "reasonable cause" issue on demurrer and/or motion to strike.

20 **III. HERNANDEZ FAILED TO PLEAD SUFFICIENT FACTS TO WITHSTAND**  
 21 **DEMURRER AS TO HIS LABOR CODE SECTION 1102.5 CLAIM**

22 Hernandez' FAC and proposed SAC still fall far short of setting forth the specific facts  
 23 required to plead his Labor Code section 1102.5 claim. To establish a *prima facie* case of  
 24 retaliation under Labor Code section 1102.5(b), as with FEHA and Title VII, Hernandez must allege  
 25 that (1) he engaged in a "protected activity," (2) the Authority took an adverse employment action  
 26 against him, and (3) a causal link exists between his protected activity and the adverse employment  
 27 action. (*Morgan v. Regents of University of Cal.* (2000) 88 Cal.App.4th 52, 69.) In order to allege  
 28 that Hernandez engaged in a protected activity, as required by the first prong of the *prima facie* case,

Hernandez must allege that he disclosed, to a government or law enforcement agency, information that he reasonably believed disclosed a violation of state or federal statute, rule, or regulation. (Lab. Code § 1102.5, subd. (b).) It is not enough for Hernandez to allege mere conclusions of law to support his retaliation claims. (*Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537.)

Hernandez' claim cannot even get off the ground because he did not, and could not have, reasonably believed that he disclosed violations of a state or federal statute, rule, or regulation. Even though Hernandez amended his complaint to reference federal and state statutes, he either knew, or as a matter of law he should have known, that the alleged wrongful acts were permissible. As a result, he could not have reasonably believed that the Authority violated a state or federal law, rule or regulation, and his retaliation claims both as alleged in the FAC and in the proposed SAC fail.

**1. Alleged Violations of the Authority's Ethics Code Cannot Support a Retaliation Claim**

By its very terms, Labor Code section 1102.5 requires a Plaintiff to disclose a violation of a state or federal law, rule or regulation. (See Labor Code § 1102.5(b).) Hernandez' amended complaint focuses primarily on alleged violations of the Authority's own Ethics and Contracts Codes, which are simply internal guidelines and not state or a federal laws, rules or regulations. Accordingly, the Authority moves to strike all references to the Authority's Ethics or Contract Codes violations in the FAC because those allegations cannot support a Labor Code section 1102.5 cause of action as a matter of law.

**2. Hernandez Could Not Have Had a Reasonable Belief That He Was Disclosing a Violation of a State or Federal Law, Rule or Regulation.**

Even *assuming arguendo* that the Ethics Code falls within the definition of a federal or state law under Labor Code section 1102.5, the facts, as alleged do not support Hernandez' ultimate conclusion that he reasonably believed that the Authority's actions violated any statutes, nor can these facts reasonably be interpreted to amount to any such violation. (See *Ankeny, supra*, 88 Cal.App.3d at p. 537 [complaint must be supported by more than conclusory allegations].) Further,

Hernandez has the burden of pleading the specific statute that was allegedly violated, and he has failed to meet this burden with regard to his disclosures. (See *Green v. Ralee, supra*, 19 Cal.4th at p. 83, fn. 7.) Without facts supporting Hernandez' alleged reasonable belief that the Authority's actions violated a federal or state law or specific references to code sections that were violated, Hernandez' retaliation claims must fail.

**a. The General Dynamics Lease.**

One of Hernandez' alleged protected disclosures involved uncovering alleged financial problems with the General Dynamics Lease. (FAC ¶ 12.) Both parties seem to agree that the terms of the General Dynamics Lease were mandated by Public Utilities Code section 170056(f). If anything, Hernandez' FAC alleges compliance with Public Utilities Code section 170056(f), not a violation of that statute. (FAC ¶12.) Hernandez now seems to add in the proposed SAC that the terms of the lease were in violation of Public Utilities Code section 170056(f)(3), but Hernandez does not set forth, even in vague terms, which terms of the lease violated subsection (f)(3). In fact, the only alleged unlawful portion of the lease on which Hernandez focuses is the dollar amount for the lease, which is set forth and mandated by subsection (f)(1). Hernandez therefore could not have had a reasonable belief that the Authority was violating the law by accepting the General Dynamics lease terms, and the Authority moves to strike any reference to the General Dynamics lease from the FAC. In addition, the Authority's demurrer to Hernandez' retaliation claim based on alleged disclosures of the General Dynamics lease should be sustained without leave to amend.

**b. The Teledyne Ryan Lease.**

Similarly, Hernandez has failed to cure the defects in his allegations with regard to the Teledyne Ryan lease. As pointed out in the moving papers, Hernandez alleges that the contamination on and the cost of the Teledyne Ryan parking lot violated Public Utilities Code section 170056(a)(1)(B), but this section only states that the Teledyne Ryan property shall remain the property of the San Diego Unified Port District. This code section has absolutely nothing to do with environmental contamination or the negotiated price for the lease. Hernandez tries to resurrect his Teledyne Ryan disclosure by stating in his opposition that the terms of the lease were not "in accordance with reasonable commercial practice . . . as required by statute" (Opposition 10:4,

emphasis added), but he does not set forth the alleged statute that was violated by the Authority's acts with regard to the Teledyne Ryan parking lot lease. Simply put, Hernandez has not been able to articulate a statute that was violated by the Teledyne Ryan parking lot lease, or that he reasonably believed was violated, as required by Labor Code section 1102.5. Hernandez has not cured these fundamental errors in his proposed SAC either (see SAC ¶13, p. 6, line 20). As a result, the Authority respectfully requests that this Court strike all references to the Teledyne Ryan lease and/or sustain the Authority's demurrer to Hernandez' retaliation cause of action predicated on this lease.

**c. Lindbergh Parking**

In both the FAC (FAC ¶18) and the proposed SAC (SAC ¶14), Hernandez alleges that he reasonably believed that the LPi contract violated the Authority's own Contract Code and the "California Code of Contracts". As discussed above, the Authority's internal rules are not the equivalent of a state or federal statute, rule or regulation, and thus cannot support a claim under Labor Code section 1102.5. In addition, the "California Code of Contracts" does not exist and thus cannot be the basis for a Labor Code section 1102.5 claim. Even if Hernandez meant to refer to the Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting the code "is to ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds." None of Hernandez' disclosures regarding LPi can be construed as a disclosure regarding this statement of legislative intent.

**d. The Restroom**

Finally, Hernandez has failed to cure the problematic allegations regarding the restroom project. Although Hernandez added a conclusory allegation in the proposed SAC that he had reasonable cause to believe that the Authority was in violation of the ADA, the actual facts that are pled do not support his conclusion. Instead, he alleges that the restroom project became more expensive because the Authority would not utilize certain space in order to expand the restrooms. (See FAC ¶11.) But there is no argument, or case support, for the concept that increased costs associated with the restroom project can or did, violate the ADA, or even that it could have violated

1 the ADA. Thus, Hernandez could not have had a reasonable belief that any such violation occurred.

2 **IV. CONCLUSION**

3 The Court should sustain its demurrer to the second, third and fourth causes of action  
 4 without leave to amend since Hernandez has not opposed the demurrer to these claims, nor has he  
 5 even proposed to re-allege them in an amended pleading. Since Hernandez has demonstrated an  
 6 inability to cure the defects in his first cause of action, the Authority respectfully requests that the  
 7 Court sustain its demurrer to all causes of action in the First Amended Complaint without leave to  
 8 amend. In the alternative, the Authority requests that the court strike improper allegations from the  
 9 First Amended Complaint, as further detailed in the notice of motion and motion to strike. Should  
 10 Hernandez be permitted to amend, he should be ordered to exclude any stricken allegations from his  
 11 amended pleading.

12 Dated: March 29, 2007

PAUL, PLEVIN, SULLIVAN &  
 CONNAUGHTON LLP

13 By: *Sandra L. McDonough*  
 14 FRED M. PLEVIN  
 15 SANDRA L. MCDONOUGH  
 16 ALBERT R. LIMBERG  
 17 Attorneys for Defendant  
 18 SAN DIEGO COUNTY REGIONAL  
 19 AIRPORT AUTHORITY  
 20  
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FILED  
Clerk of the Superior Court

MAR 29 2007

By: C. BAILEY

**PROOF OF SERVICE**

I, Julia M. Szlakowski, the undersigned, hereby declare that I am over the age of eighteen years and not a party to this action. I am employed, or am a resident of, the County of San Diego, California, and my business address is: Paul, Plevin, Sullivan & Connaughton LLP, 401 B Street, Tenth Floor, San Diego, California 92101.

On March 29, 2007, I caused to be served the following document(s):

**REPLY BRIEF IN SUPPORT OF DEFENDANT SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY'S DEMURRER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT AND/OR MOTION TO STRIKE**

on the interested party (ies) in this action by placing ☒ a true copy ☐ the original thereof and addressed as follows:

Cathryn Chinn, Esq.  
1901 First Avenue, Suite 400  
San Diego, CA 92101  
Tel: 619-295-4190 / Fax: 619-295-9529  
Attorney for Plaintiff Jose Hernandez

☐ (By **MAIL SERVICE**) I then sealed each envelope and, with postage thereon fully prepaid postage, I placed each for deposit with United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

☐ (By **FACSIMILE**) I transmitted the documents by facsimile machine, pursuant to California Rules of Court, Rule 2006. The facsimile machine I used complied with Rule 2003 and no error was reported by the machine. The transmitting facsimile machine number is 619-615-0700. The fax number of the party being served is 619-295-9529. Pursuant to Rule 2006.

☒ (By **OVERNIGHT DELIVERY**) I caused to be delivered such envelope by hand to the office of the addressee. I then sealed each envelope and, with postage thereon fully prepaid, I placed each for deposit this same day, at my business address shown above, following ordinary business practices for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 29, 2007, at San Diego, California.

  
JULIA M. SZLAKOWSKI





ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Fred M. Plevin (126185) Sandra L. McDonough (193308) Paul, Plevin, Sullivan & Connaughton LLP 401 B Street, Tenth Floor San Diego, CA 92101 TELEPHONE NO.: 619-237-5200 FAX NO. (Optional): 619-615-0700 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): San Diego County Regional Airport Authority		CM-110 FOR COURT USE ONLY Clerk of the Superior Court <b>APR 06 2007</b> By: M. WONG-JIMENEZ, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: P.O. Box 12018 CITY AND ZIP CODE: San Diego, CA 92112-0128 BRANCH NAME:		
PLAINTIFF/PETITIONER: Jose Hernandez  DEFENDANT/RESPONDENT: San Diego County Regional Airport Authority		
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)		CASE NUMBER: GIC871979
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: April 20, 2007 Time: 10:00 a.m. Dept.: 75 Div.: Room: Address of court (if different from the address above):		

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
  - a. ☒ This statement is submitted by party (name): San Diego County Regional Airport Authority
  - b. ☐ This statement is submitted jointly by parties (names):
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
  - a. The complaint was filed on (date):
  - b. ☐ The cross-complaint, if any, was filed on (date):
3. Service (to be answered by plaintiffs and cross-complainants only)
  - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b. ☐ The following parties named in the complaint or cross-complaint
    - (1) ☐ have not been served (specify names and explain why not):
    - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
    - (3) ☐ have had a default entered against them (specify names):
  - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. Description of case
  - a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):  
 See 4 (b)

CM-110

PLAINTIFF/PETITIONER: Jose Hernandez	CASE NUMBER:
DEFENDANT/RESPONDENT: San Diego County Regional Airport Authority	GIC871979

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.) Hernandez alleges that defendant terminated his employment in retaliation for Hernandez' protected activities under Labor Code section 1102.5. Defendant denies any retaliation and liability in this action.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☒ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
- b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain): This case is not yet at issue. Once the case is at issue, defendant requests sufficient time and opportunity to file a motion for summary judgment prior to trial.
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 7
- b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☒ by the following:

- a. Attorney: Amy Gonzalez
- b. Firm: San Diego County Regional Airport Authority
- c. Address: 3225 N. Harbor Drive, San Diego, CA 92138
- d. Telephone number: 619-400-2425
- e. Fax number: 619-400-2428
- f. E-mail address: agonzale@san.org
- g. Party represented: San Diego County Regional Airport Authority

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
- c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER: Jose Hernandez	CASE NUMBER:
DEFENDANT/RESPONDENT: San Diego County Regional Airport Authority	GIC871979

## 10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation  
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)  
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)  
 (4) ☐ Binding judicial arbitration  
 (5) ☐ Binding private arbitration  
 (6) ☐ Neutral case evaluation  
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.  
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
 g. ☒ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

## 11. Settlement conference

- ☒ The party or parties are willing to participate in an early settlement conference (specify when): July 2007

## 12. Insurance

- a. ☒ Insurance carrier, if any, for party filing this statement (name): ACE USA  
 b. Reservation of rights: ☐ Yes ☐ No  
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

## 13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

## 14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.  
 (1) Name of case:  
 (2) Name of court:  
 (3) Case number:  
 (4) Status:

☐ Additional cases are described in Attachment 14a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

## 15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

## 16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):  
 Defendant expects to file a motion for summary judgment or, in the alternative, summary adjudication.

CM-110

PLAINTIFF/PETITIONER: Jose Hernandez	CASE NUMBER:
DEFENDANT/RESPONDENT: San Diego County Regional Airport Authority	GIC871979

## 17. Discovery

- a. ☐ The party or parties have completed all discovery.  
b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party	Description	Date
Defendant	Written discovery	July 2007
Defendant	Third party depositions	July 2007

- c. ☐ The following discovery issues are anticipated (*specify*):

## 18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.  
b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

## 19. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

## 20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*): The parties will meet and confer prior to the CMC.  
b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

## 21. Case management orders

Previous case management orders in this case are (*check one*): ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: April 6, 2007

Sandra L. McDonough

(TYPE OR PRINT NAME)

▶   
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

1 *Hernandez v. San Diego County Regional Airport Authority*  
 2 SDSC Case No. GIC871979

3 **PROOF OF SERVICE**

4 I, the undersigned, hereby declare that I am over the age of eighteen years and not a party  
 5 to this action. I am employed, or am a resident of, the County of San Diego, California, and my  
 6 business address is: Paul, Plevin, Sullivan & Connaughton LLP, 401 B Street, Tenth Floor, San  
 7 Diego, California 92101.

8 On April 6, 2007, I caused to be served the following document(s):

9 **CASE MANAGEMENT STATEMENT**

10 on the interested party (ies) in this action by placing ☒ a true copy ☐ the original thereof and  
 11 addressed as follows:

12 Cathryn Chinn, Esq.  
 13 1901 First Avenue, Suite 400  
 14 San Diego, CA 92101  
 15 Tel: 619-294-9183 / Fax: 619-295-4190  
 16 Attorney for Plaintiff Jose Hernandez

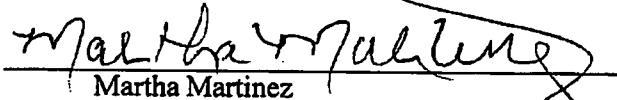
17 ☒ (By **MAIL SERVICE**) I then sealed each envelope and, with postage thereon fully  
 18 prepaid postage, I placed each for deposit with United States Postal Service, this same  
 19 day, at my business address shown above, following ordinary business practices.

20 ☐ (By **FACSIMILE**) I transmitted the documents by facsimile machine, pursuant to  
 21 California Rules of Court, Rule 2006. The facsimile machine I used complied with Rule  
 22 2003 and no error was reported by the machine. The transmitting facsimile machine  
 23 number is 619-615-0700. The fax number of the party being served is 619-295-9529.  
 24 Pursuant to Rule 2006.

25 ☐ (By **OVERNIGHT DELIVERY**) I caused to be delivered such envelope by hand to the  
 26 office of the addressee. I then sealed each envelope and, with postage thereon fully  
 27 prepaid, I placed each for deposit this same day, at my business address shown above,  
 28 following ordinary business practices for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed April 6, 2007, at San Diego, California.

23   
 24 Martha Martinez





1 FRED M. PLEVIN (SBN 126185)  
 SANDRA L. MCDONOUGH (SBN 193308)  
 2 ALBERT R. LIMBERG (SBN 211110)  
**PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP**  
 3 401 B Street, Tenth Floor  
 San Diego, California 92101-4232  
 4 Telephone: 619-237-5200  
 Facsimile: 619-615-0700

5 AMY S. GONZALEZ (SBN 181745)  
 6 **SAN DIEGO COUNTY REGIONAL AIRPORT**  
**AUTHORITY**  
 7 3225 N. Harbor Drive  
 San Diego, CA 92138  
 8 Telephone: (619) 400-2425  
 Facsimile: (619) 400-2428

9  
 10 Attorneys for Defendant  
 SAN DIEGO COUNTY REGIONAL AIRPORT  
 11 AUTHORITY

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SAN DIEGO**

14 **JOSE HERNANDEZ,**  
 15 **Plaintiff,**

16 **v.**

17 **SAN DIEGO COUNTY REGIONAL**  
**AIRPORT AUTHORITY, a public entity;**  
 18 **and DOES 1 through 12, inclusive,**

19 **Defendants.**

**CASE NO. GIC 871979**

**NOTICE OF MOTION AND MOTION TO  
 STRIKE PLAINTIFF'S SECOND AMENDED  
 COMPLAINT**

**Date:** May 11, 2007  
**Time:** 1:30 p.m.  
**Dept:** 75  
**Judge:** Hon. Richard E. Strauss  
**Complaint Filed:** September 1, 2006  
**Trial Date:** Not Set

**EXEMPT FROM FEES  
 GOVT. CODE § 6103**

23 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

24 **PLEASE TAKE NOTICE** that on May 11, 2007, at 1:30 p.m., or as soon thereafter as  
 25 counsel may be heard, in Department 75 of the San Diego County Superior Court, located at 330  
 26 West Broadway, San Diego, California 92101, defendant San Diego County Regional Airport  
 27 Authority ("Authority") will and hereby does move to strike improper and irrelevant allegations  
 28 from the Second Amended Complaint ("SAC") pursuant to Code of Civil Procedure section

PAUL, PLEVIN,  
 SULLIVAN &  
 CONNAUGHTON LLP

NOTICE OF MOTION AND MOTION TO STRIKE  
 PLAINTIFF'S SECOND AMENDED COMPLAINT

1 436(a), as detailed in the table attached to this notice as Exhibit A and incorporated herein by  
 2 reference, on the following grounds:

- 3 1. Plaintiff has failed to allege a state or federal law, rule or regulation that the Authority  
 4 allegedly violated, as required by Labor Code section 1102.5 (SAC ¶¶ 14, 18, 28, 29, 33  
 5 (a-o), 34-38, 43, and 47.);
- 6 2. Plaintiff has failed to allege facts supporting his allegation that he reasonably believed that  
 7 the Authority's actions violated a state or federal law, rule or regulation, as required by  
 8 Labor Code section 1102.5(b). (SAC ¶¶ 10, 11, 12, 13, 29, 33, 34-35, and 44-46);
- 9 3. Plaintiff has failed to allege that the Authority made or enforced a rule, policy or  
 10 regulation that prevented him from disclosing violations of law, as required by Labor  
 11 Code section 1102.5(a) (SAC ¶ 34); and
- 12 4. Plaintiff has failed to allege that he disclosed certain purported ethical violations (SAC ¶  
 13 33).

14 This motion is based on this notice and motion, the accompanying memorandum of points  
 15 and authorities filed in support of the demurrer and this motion to strike, the entire file in this  
 16 case, and any other evidence or argument properly considered by the Court in connection with this  
 17 motion.

18 This Court follows California Rules of Court, Rule 3.1308. The Court will therefore make  
 19 its tentative ruling available by telephone at (619) 531-3690 the court day before the scheduled  
 20 hearing at 3:00 p.m., or the tentative ruling may be reviewed on the Court's internet web site  
 21 ([www.sdcourt.ca.gov](http://www.sdcourt.ca.gov)) after 3:00 p.m. on that same day.

22 Dated: April 19, 2007

PAUL, PLEVIN, SULLIVAN &  
 CONNAUGHTON LLP

By: 

FRED M. PLEVIN  
 SANDRA L. MCDONOUGH  
 ALBERT R. LIMBERG  
 Attorneys for Defendant  
 SAN DIEGO COUNTY REGIONAL  
 AIRPORT AUTHORITY

PAUL, PLEVIN,  
 SULLIVAN &  
 CONNAUGHTON LLP

NOTICE OF MOTION AND MOTION TO STRIKE  
 PLAINTIFF'S SECOND AMENDED COMPLAINT

## EXHIBIT A

## TABLE OF ALLEGATIONS TO BE STRICKEN FROM THE COMPLAINT

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Para. 10, p. 4, lines 22-p. 5, lines 3, which reads: "... In the process it was revealed that Enarson had entered into side deals with a handshake agreement with Host that restricted the Operations Division's ability to annex the space which was needed to comply with ADA requirements. The Plaintiff had reasonable cause to believe that the Authority was in violation of the federal American Disabilities Act [sic] and its enabling regulations. Because Enarson refused to either take the space away from Host or renegotiate with them, major modifications had to be made that increased the project budget by over \$2 million. During the long delays women were forced to endure the long lines to use the restrooms. There was no access for the disabled to the restroom for which the Plaintiff also had reasonable cause to believe that the Authority was in violation of the equal access provision and regulation of the ADA."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff does not allege facts supporting his ultimate conclusion that he reasonably believed the Authority violated the ADA. Instead, he only alleges that he reported that the Authority was restricted from complying with the ADA and the Authority was thus required to increase the project budget by over \$2 million. Plaintiff fails to allege <u>which</u> ADA provision was purportedly violated, or <u>how</u> the "side deal" or project's cost increase purportedly violated the ADA. Because plaintiff fails to allege facts supporting his conclusory allegation, he could not have had a reasonable belief that the Authority was violating the ADA, as required by Labor Code section 1102.5.</p>
<p>Paragraph 11, which reads: "The Plaintiff disclosed to members of the Authority Enarson's 'side deal' made with out negotiation that restricted the Authority's ability to annex the space needed to comply with ADA requirements for the airport restroom. Plaintiff also disclosed that Enarson's refusal had increased the project budget by over \$2 million. On both counts, Plaintiff believed that he was disclosing legal violations: violations of the ADA requirements and also disclosing the unauthorized use of public assets because Enarson had a 'handshake' deal. The project suffered over three (3) years of delays due to Enarson's conflict with the airport's food and beverage</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff does not allege facts supporting his ultimate conclusion that he reasonably believed the Authority violated the ADA. Instead, he only alleges that he reported that the Authority was restricted from complying with the ADA and the Authority was thus required to increase the project budget by over \$2 million. Plaintiff fails to allege <u>which</u> ADA provision was purportedly violated, or <u>how</u> the "side deal" or project's cost increase purportedly violated the ADA. Because plaintiff fails to allege facts supporting his conclusory allegation, he could not have had a reasonable belief that the Authority was</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
concessionaire.”	violating the ADA, as required by Labor Code section 1102.5.
<p>Paragraph 12, which reads: “The General Dynamics property is approximately 85 acres and sits along Pacific Coast Highway on the north side of the airport. The property contains a 1,600 parking stall long term parking lot (SAN Park Pacific Highway), and provides for Convention Center truck staging, rental car storage, and Cruise Ship truck staging. The terms of the original three year lease called for rent of \$4.6 million year one, \$6.6 million year two, and \$8.6 million year three. Enarson was the lead negotiator on the lease. When Plaintiff compared the revenue potential of the approximately \$3 million net from the parking operation and \$1 million from the vehicle storage, the lease payments were too expensive and out of line. Plaintiff disclosed that the increased lease payments pulled funds away from the operating budget and he believed it was an unauthorized use of the Authority funds. Plaintiff also believed the failure to negotiate the lease properly was a violation of law and contrary to public interest. The Plaintiff had reasonable cause to believe that this failure and other actions related to the lease were unlawful acts that violated California Public Utilities Code section 170056 (f)(1)(2)(3)[.] Plaintiff had reasonable cause to believe that the terms of the lease were in violation of the California Public Utilities Code section 1700056(f)(3) [sic]. Despite the Plaintiff’s objections to the actual revenue streams, Enarson decided the matter would go up to the Vice President level, where it died and no corrective action was taken. The lease was signed contrary to the objections of true forms of revenue streams.”</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff could not have had a reasonable belief that the General Dynamics lease violated a federal or state law because the terms of the lease were authorized by statute. (See Public Utilities Code § 170056(f); Labor Code § 1102.5 [reasonable belief requirement])</p>
Paragraph 13, which reads: “The Authority’s Teledyne Ryan property lease calls for \$3	This paragraph is subject to a motion to strike under California Code of Civil Procedure

1 2	ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>million in annual payments for the 46.77 acre property, located immediately east of the airport along Harbor Drive. At the time the lease was negotiated, with Enarson as the lead negotiator, contamination of the property allegedly required approximately \$10 million. The failure to properly inspect and analyze the actual contamination resulted in a finding that the contamination remediation range would be approximately \$30 million and would limit the use of the property to the existing 350 space long term parking lot (SAN Park Harbor Drive). Current revenues derived from the parking lot are approximately \$1.2 million a year with about \$700,000.00 in expenses, netting the Authority only \$500,000.00. The original plan for the property was to phase in the parking development from what is now Phase I, 350 parking stalls, to Phase 2, approximately 1,300 stalls. If the project had stayed as planned the property would now be developed and be positioned to take advantage of the increasing occupancy levels in the market. When the development process began the discovery of the deep environmental concerns with the property, which were not previously disclosed before Enarson completed the negotiations for the lease, significantly curtailed the purpose of the lease because of the unusable areas. Plaintiff disclosed the findings that there was no way to open Phase 2 of the parking development and also disclosed the enormous amount of money the Authority was paying for the lease. The Plaintiff believed that these acts by the Authority were unlawful and in violation of California Public Utilities Code section 170056(a)(1)(B). Further, the Plaintiff's disclosure of the unlawful acts occurred at committee meetings closed to the public, <i>[sic]</i> at management and staff meetings closed to the public. Plaintiff asked the Authority members, including Enarson, 'Why are we paying all this money? Why are we</p>	<p>section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff could not have had a reasonable belief that he was reporting a statutory violation when the referenced statute is in no way connected to the complained-of conduct. (See California Public Utilities Code section 170056(a)(1)(B).)</li> <li>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)</li> </ol>

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NOTICE OF MOTION AND MOTION TO STRIKE  
PLAINTIFF'S SECOND AMENDED COMPLAINT

5



1 2	ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
3 4 5 6 7 8 9 10 11 12	<p>paying the rent?' Enarson replied, 'We're obligated to pay the rent.' Plaintiff stated that 'we can use a little bit, 351 parking stalls, yet we're paying \$3 million and we can't use any of the rest. We're on the hook for the \$30 million. We should only pay a pro rata amount.' Enarson's response was that it would get pushed up to the Vice President group. When the Teledyne Ryan transition team, of which the Plaintiff was a member, re-briefed the Vice Presidents, at a second meeting, the members and officers were in awe, and asked, 'Are you sure it's \$30 million? Are you kidding me?' Enarson was agitated and Plaintiff received reports that Enarson was angry."</p>	
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>Paragraph 14, p. 8, lines 9-23-p.9, line 8, which reads: "Plaintiff then discovered that LPI was double billing the Authority for Workers Compensation Insurance. He had noted that the premiums were running twice the amount of the previous year and were being billed to a different expense category. As a result Plaintiff posted a credit of approximately \$150,000.00 against LPI's monthly request for reimbursement. Plaintiff had communicated throughout the process and disclosed LPI's wrongdoing and financial misuse issues with his direct supervisor, the Vice President of Airport Operations. The Vice President asked Plaintiff to work out the issues with Grey because he was a Minority Owned Business and the Authority needed the relationship in order to comply with FAA regulations governing Minority participation. Plaintiff had disclosed computational or other errors in LPI's bid submission; the unsatisfactory performance of the contract; the failure of LPI to submit insurance documents acceptable to the Authority; Grey's unjustified refusal to warrant his performance and other offenses and actions that indicated a lack of business integrity by</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the LPI contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff's reference to the "California Code of Contracts" is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting that code is to "ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds." None of Plaintiff's alleged disclosures could reasonably be interpreted as a disclosure of a "violation" of this statement of legislative intent.</li> <li>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the</li> </ol>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
LPI. Plaintiff believed that disclosures he made pursuant to the contract contained violations of the Ethics Code and also of rules and regulations of law."	plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)
Paragraph 18, which reads: "By October 2005 the Plaintiff had met with the Vice President of Operations to inform the Vice President of Operations of the status of LPI's non-compliance and areas of deficiencies and to obtain agreement that Maurice Gray would step down as President of LPI should he not be able to comply with the standards and improve the deficiencies and clarify his job duties for his position. Pursuant to the California Code of Contracts section 1100, the Authority was required to comply with the California Code of Contracts, section 100(b), which the Plaintiff had reasonable cause to believe was being violated by the Authority. The Authority's Contracts Code, Article 5, sections 5.11(a)(3)(4)(5)(6)(8) and section 5.18(a) were also a basis for the Plaintiff to have reasonable cause of violation by the Authority. The Plaintiff regularly worked with these Codes and regulations and expected the Authority to follow them."	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the LPI contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff's reference to the "California Code of Contracts" is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting that code is to "ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds." None of Plaintiff's alleged disclosures could reasonably be interpreted as a disclosure of a "violation" of this statement of legislative intent.</li> <li>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)</li> </ol>
Paragraph 28, which reads as follows:	This paragraph is subject to a motion to strike

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>“Plaintiff then pointed out his points of concern to the former Vice President: (1) the ambiguousness of the ‘Conflict of Interest’ Code, and (2) more importantly, the application of the policy among Authority employees. The Plaintiff mentioned the specific abuse of the policy from the Authority Vice Presidents, Board Members, and the President/CEO Thella Bowens (Doe No.1) This included airline ticket changes, upgrades, access to First Class lounges and other routinely-demanded expensive privileges not allowed to other Authority employees. The Plaintiff pointed out to the Vice President that the application of the ‘Conflict of Interest’ Code policy was selective and unfairly enforced. SDCRAA Code of Ethics Article 2, part 2 et.seq.”</p>	<p>under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the Authority, as required by Labor Code section 1102.5. (Labor Code § 1102.5)</p>
<p>Paragraph 29, which reads as follows: “The Plaintiff had discussed such items as the above-stated violations of the Authority’s policy with the former Vice President when he had been the Vice President and the Plaintiffs supervisor and he had always seen no reason for concern, and no action had been taken. This same former Vice President had himself directed the Plaintiff to take care of tickets for Authority employees and Board Members. The Plaintiff asked why it was okay for Thella Bowens (Doe No.1) to ask and receive favors and not okay for employees to receive the same benefits. One example was Bowen’s request to fly in BBQ meat from Texas. The former Vice President defended this practice as approved as an ‘Accepted Industry Practice’, which connotes that among the Regional Airport Authority for the Counties paying to fly in meat from another state is a billable expense. SDCRAA Code of Ethics Article 2, section 2.10 (d)(9)(A)(B).”</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the Authority, as required by Labor Code section 1102.5. (Labor Code § 1102.5)</li> <li>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not “making known” the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of “disclosure” under wrongful termination in violation of public policy doctrine].)</li> <li>3. Plaintiff has not alleged that he reasonably believed that these actions were a violation of law, as required by Labor Code section</li> </ol>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	1102.5.
<p>Paragraph 33(a), which reads: "The Vice President of Operations paid \$1200.00 for a ticket on an airline to get Blue Bell ice cream for Thella Bowen's BBQ, received reimbursement for the travel expense under the guise that he was attending a cultural awareness development meeting with another airline. The ice cream was available in Southern California. When word got around the Authority about the cost of going to Texas for ice cream, the Vice President directed the Plaintiff to 'shut that little shit up' referring to the budget analyst who continued to comment on it. The Plaintiff refused the directive. This travel expense was not reasonably related to a governmental purpose." [hereinafter "Blue Bell Transaction"]</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the Blue Bell transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal ethics code is not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</li> <li>2. Plaintiff has not set forth any violation of the Authority's internal ethics code.</li> <li>3. Plaintiff has not alleged that he disclosed this Blue Bell Transaction, or that he reasonably believed this Blue Bell Transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</li> <li>4. Plaintiff also has not sufficiently alleged that he refused to perform an activity that would result in a violation of state or federal law, rule, or regulation, as required by Labor Code section 1102.5(c).</li> <li>5. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)</li> </ol>
Paragraph 33(b), which reads: "Each time an	This paragraph is subject to a motion to strike

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Authority employee requested a change to be made to an airline ticket a benefit was accepted when the recipient took 'any action exercising control over the benefit.' Thella Bowen would purchase her own tickets and then request date changes and upgrades, along with Premier Lounge Access (only permitted for airline premier club members). This practice was so prevalent by Bowens and her staff that on the day that the investigation of the Plaintiff began, Bowens had secured access to an airline Premier lounge prior to her trip to Asia. Any change to any ticket itinerary is approximately fifty to one hundred dollars, a service charge, plus the cost in set p rice [sic] for an upgrade on a ticket, ranging from one hundred fifty to two hundred dollars each way. Thella Bowens routinely instructed her Assistant to contact either the Plaintiff or the Vice President that the Plaintiff reported to, to make the changes described above. The Plaintiff would make the changes for Bowen by going directly to the airline Station Manager and requesting the change for Thella Bowens. The Plaintiff performed this benefit accommodation more than thirty times for Bowen and her staff. All of these requested benefits were in violation of the Ethics policy."</p>	<p>under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by these transactions, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal ethics code is not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</li> <li>2. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed these Transactions were a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</li> </ol>
<p>Paragraph 33(c), which reads: "Each year Thella Bowens requested an employee BBQ named 'Thella's BBQ.' The event drew from fifty to over three hundred attendees. The centerpiece of the event called for pork, beef ribs and brisket to be flown out from her favorite restaurant in the Dallas Fort Worth area, Angelo's. Employees from the Director level and above were required to pay money to help subsidize the expense of the meat. Currently Thella's BBQ has been renamed the 'Annual Employee Appreciation Employees BBQ' and now costs approximately ten to fifteen thousand dollars, not including the cost</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the BBQ, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</li> <li>2. The facts as alleged do not demonstrate a</li> </ol>



ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>of the labor for the Authority employees who are designated to support the event. The Plaintiff was then instructed to contact an airline to make arrangements at her behest for free airline delivery of the meat. The net weight of the total delivery was over two hundred pounds at an approximate cost of \$2500.00. The free airline flight of the meat violated the Ethics policy. The cost of the BBQ comes from the revenue collected by the Authority from the airlines and its users."</p>	<p>violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p>
<p>Paragraph 33(d), which reads: "Thella Bowens requested through a Vice President that he obtain special airline flight privileges for her sister who lives in Texas. Bowens asked for the ability to get either stand by or reduced rate tickets for her sister for business and personal travel. The request was made to the airline Station Manager. The airline Station Manager then responded to the conditions under which they could do it. This request by Thella Bowens (Doe No.1) violates the Ethics Code."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's "rules and regulations" are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Paragraph 33(e), which reads: "The request from the Chairman of the Board of the Authority to secure First Class upgrade airline tickets on the day of his planned departure for his wife and himself required the intervention of the airline Station Manager. This tactic allowed the Chairman of the Board of the Authority to save approximately two hundred fifty dollars for the upgrade expenses. This action violates the Ethics Code."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</li> <li>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</li> <li>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</li> <li>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</li> </ol>
<p>Paragraph 33(f), which reads: "The Chairman of the Board of the Authority on several occasions requested to enter into a temporary lease to use a portion of the parking lot at Harbor Island for no expense for an activity he is involved with annually. The lease of Authority property for non-aviation use is strictly prohibited and a violation of the Ethics Code as well as other laws and regulations."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</li> </ol>



1 2 3 4 5 6 7 8 9 10 11	ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
		<p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p>
<p>12 Paragraph 33(g), which reads: An Authority Board member annually inserts his official authority to influence negotiations between a community event and the rental of the General Dynamics property at a rate lower than the fair market value. As a condition of this use, all rental cars must be removed from the property and a large amount of vehicles relocated from the property. This violates the Ethics Code as well as other laws and regulations.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>		<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	Code section 1102.5(c).
<p>Paragraph 33(h), which reads: "An Authority Board member requested assistance in rearranging his itinerary so that he could attend the Little League World Championships in Williamsport, Pennsylvania. The Plaintiff had to work with three different airlines to coordinate the First Class upgrade the Board member requested, as well as the time changes to allow the Authority Board member his desired schedule. This violates the Ethics Code."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</li> <li>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</li> <li>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</li> <li>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</li> </ol>
<p>Paragraph 33(I), which reads: "The Authority's Vice President of Budget and Finance repeatedly requested from the Plaintiff assistance in changing flight schedules. Over a one year period the Plaintiff assisted with the change of approximately fifteen to twenty schedules, all to accommodate personal and non Authority business travel to Las Vegas and Texas. This violates the Ethics Code."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code</li> </ol>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	<p>section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p>
<p>Paragraph 33(j), which reads: "The General Counsel of the Authority used his official position to obtain fifty-yard-line premier seating at the Poinsettia Bowl football game by getting the Plaintiff to use his official position as Director, Landside Operations to make contact with the Holiday Bowl Committee and request premium seating for the event. This involved securing six tickets for \$300.00, which the Plaintiff paid for so that the General Counsel Bret Lobner had to reimburse the Plaintiff. When the Holiday Bowl Committee member asked the Plaintiff if the tickets were complimentary for no charge the Plaintiff refused the gift and paid for them. The General Counsel Bret Lobner knew he was in violation of the Ethics Code when he made the request for the favors from the Plaintiff.</p> <p>After the Plaintiff filed his Claim with the Airport Authority, the General Counsel Bret Lobner wrote to the Plaintiff that 'the facts about me are false, misleading, defamatory, slanderous, libelous' because the number of tickets he requested was six, not eight, and the price he paid for the tickets was \$300.00 not</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by these transactions, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal codes are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed these transactions were a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>\$400.00. Lobner then threatened to pursue legal action against the Plaintiff for 'filing a false defamatory accusation against [him]' because 'Mr. Hernandez had volunteered to pick up the tickets since he already had plans to visit the ticket the ticket <i>[sic]</i> location', a statement which is untrue. The General Counsel Bret Lobner's threat is an additional and separate violation of the Ethics Code."</p>	<p>perform this directive, as required by Labor Code section 1102.5(c).</p>
<p>Paragraph 33(k), which reads: "The Plaintiff was present with the Vice President of Operations when the Chairman of the Board of the Authority requested a contractor to be hired to re-survey his Authority office space for 'listening devices.' The Chairman's office space had previously on two separate occasions been surveyed for 'bugging devices' or other 'listening apparatus.' The Chairman was worried that his communications could be intercepted by the FBI or similar such agencies. This contract request is a gross waste of the Authority funds."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5)</li> <li>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</li> <li>3. Plaintiff has not alleged that he disclosed this alleged violation, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</li> <li>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</li> </ol>
<p>Paragraph 33(l), which reads: "The Vice President of Budget and Finance, representing himself and Thella Bowens as Board members of the Jackie Robinson YMCA, requested that the Plaintiff secure a free round trip airline ticket for the owner of national basketball team. The request was made so that the owner</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by</li> </ol>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>could be the featured speaker at a banquet."</p>	<p>Labor Code section 1102.5. (Labor Code § 1102.5)</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed this alleged ethical violation, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p>
<p>Paragraph 33(m), which reads: "The Vice President of Operations with the full knowledge of Thella Bowens, requested that the Plaintiff secure free round trip airline tickets to be donated as the featured prizes of the annual United Way campaign. The Plaintiff did this twice."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5)</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed this alleged ethical violation, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	<p>Code section 1102.5(c).</p> <p>5. Plaintiff may not maintain a private right of action under the Authority's internal ethics code.</p>
<p>Paragraph 33(n), which reads as follows:          "Thella Bowens requested from the Plaintiff that a marked reserved parking stall be designated in the employee parking lot at the Commuter Terminal for her personal use. Bowens then never used the stall, choosing to park elsewhere and she reassigned the stall to the Vice President of Budget and Finance. That particular reserved parking staff <i>[sic]</i> is clearly marked for use only by the President/CEO of the Airport Authority. The designation of the parking stall to the Vice President of Budget and Finance clearly connotes preferential treatment and is a violation of Airport Authority rules and regulations."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's "rules and regulations" are not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</li> <li>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</li> <li>3. Plaintiff has not alleged that he disclosed these alleged ethical violations, or that he reasonably believed these transactions were a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</li> <li>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</li> </ol>
<p>Paragraph 33(o), which reads: "The Vice President of Operations instructed the Plaintiff to use his position as Director of Landside Operations to secure a limousine from one of the Airport's service providers to be used as part of the procession for a colleague's wife's funeral."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <ol style="list-style-type: none"> <li>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by this transaction, as required by</li> </ol>



ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	<p>Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal ethics code is not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. The facts as alleged do not demonstrate a violation of the Authority's internal ethics code.</p> <p>3. Plaintiff has not alleged that he disclosed this alleged ethical violation, or that he reasonably believed this transaction was a violation of a state or federal law, rule or regulation, as required by Labor Code section 1102.5(b).</p> <p>4. Plaintiff did not allege that he refused to perform this directive, as required by Labor Code section 1102.5(c).</p>
<p>Paragraph 34, p. 21, line 16-p. 22, line 10, which reads: "The Plaintiff attempted, time and time again, to bring to the attention of the attorney from LUCE FORWARD the above-stated Ethics violations and every single time the attorney from LUCE FORWARD interrupted and spoke over the Plaintiff to prevent the Plaintiff from reporting violations, both legal and ethical, that he was aware of and had not been 'investigated.' The attorney was not interested in knowing about the above-stated violations or any incident that did not show wrongdoing by the Plaintiff. The Plaintiff did his best to report, disclose, divulge and bring to the attention of his employer's 'investigator' (the attorney from LUCE FORWARD) facts and information relative to both suspected and actual violations of state law directly related to his job. The Plaintiff observed improper governmental activity by employees of the Authority undertaken in the performance of the</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he believes was violated by the Authority's acts, as required by Labor Code section 1102.5. (Labor Code § 1102.5) The Authority's internal ethics code is not a state or federal law, rule, or regulation covered by the provisions of Labor Code section 1102.5.</p> <p>2. Plaintiff has not alleged that the Authority made, adopted or enforced a rule, regulation, or policy, as required by Labor Code section 1102.5(a), that prevented him from disclosing alleged improprieties.</p>



ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>employee's official duties that demonstrated economic waste, incompetency and inefficiency. The 'investigator' Thella Bowens hired (the lawyer from LUCE FORWARD) attempted to use and used, both directly and indirectly, intimidating, threatening, coercing, and commanding tactics to influence the information he was told by the Plaintiff and by the witnesses during their interviews. Thella Bowens could not have reasonably believed that taking personnel action, including hiring and directing an 'investigation' into the Plaintiff's alleged but not articulated violations of the Authority's Ethics policy was and is justified based on her own and her direct report employees' own well-know <i>[sic]</i> violations of the same policies and Codes. Bowens was well aware that the evidence of her own violations were known to the Plaintiff and when he reported those violations to her hired 'investigator' he was cut off and told not to discuss them. Other witnesses also disclosed to Bowen's 'investigator' knowledge of Bowen's wrongdoing as well as the Ethics violations by her Vice Presidents that Bowens condoned and ratified."</p>	
<p>Paragraph 35, p. 22, lines 13-20, line 6, which reads: "... The first disclosure arose from the Plaintiff's opposition to a 'side deal' that Bryan Enarson made with a concessionaire at the airport, Host, that restricted the Authority's ability to annex the space needed to comply with ADA requirement for the women's restroom at the airport.. <i>[sic]</i> The result of Enarson's actions increased the project budget by over \$2 million. The Plaintiff believed this resulted in legal noncompliance with the ADA requirements that demand access for disabled individuals which were well settled at that time and took precedence over the handshake agreement Enarson made without negotiation</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff does not allege facts supporting his ultimate conclusion that he reasonably believed the Authority violated the ADA. Instead, he only alleges that he reported that the Authority was restricted from complying with the ADA and the Authority was thus required to increase the project budget by over \$2 million. But Plaintiff fails to allege <u>which</u> ADA provision was purportedly violated, or <u>how</u> the "side deal" or project's cost increase purportedly violated the ADA. Because fails to allege facts supporting his conclusory allegation, he could not have had a reasonable belief that the Authority was violating the</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
with Host."	ADA, as required by Labor Code section 1102.5.
Paragraph 35, p. 22, lines 21-25, which reads: "The second disclosure also arose from events involving Enarson, who was the lead negotiator on behalf of the Airport for the property known as the General Dynamics property. Enarson proceeded with the negotiations without ascertaining the extent of the 'public hazards around the airport' and resulted in a lease agreement that loses millions of dollars per year for the Authority."	This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:  Plaintiff could not have had a reasonable belief that the General Dynamics lease violated a federal or state law because the terms of the lease were authorized by statute. (See Public Utilities Code § 170056(f); Labor Code § 1102.5 [reasonable belief requirement])
Paragraph 35, p. 22, line 26-p. 23, line 3, which reads: "The third disclosure involved the misuse and waste of the usable land around the property known as the Teledyne Ryan property. Enarson proceeded with the negotiations without ascertaining the extent of the 'public hazards around the airport' and that resulted in a lease agreement that loses millions of dollars per year for the Authority. Enarson then blocked open discussion of the problem and no resolution has been attempted."	This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:  1. Plaintiff could not have had a reasonable belief that he was reporting a statutory violation when the referenced statute is in no way connected to the complained of conduct. (See California Public Utilities Code section 170056(a)(1)(B); Labor Code § 1102.5)  2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)
Paragraph 35, p. 2, lines 4-6, which reads: "The fourth and final disclosure encompassed the issue of the contract bid by the Lindbergh Parking, Inc. (LPI) and its failure to meet its contract expectations and the offenses and actions by the LPI that indicate a lack of	This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:  1. Plaintiff has not set forth a state or federal

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>business integrity.”</p>	<p>law, rule, or regulation that he reasonably believes was violated by the LPI contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff's reference to the “California Code of Contracts” is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting that code is to “ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.” None of Plaintiff's alleged disclosures could reasonably be interpreted as a disclosure of a “violation” of this statement of legislative intent.</p> <p>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not “making known” the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of “disclosure” under wrongful termination in violation of public policy doctrine].)</p>
<p>Paragraph 37, which reads: “The Plaintiff believed in good faith that LPI was in violation of California Public Contracting laws found in the California Public Contract Code Section 100 et seq. The discovery that LPI had presented false expenses in its bid submission, combined with the unsatisfactory performance of the contract, its failure to submit insurance documents and its lack of business integrity when given time and opportunities to correct its wrongdoing seriously affected the reliability and credibility of the performance of LPI. The final deadline for Maurice Gray to submit a job description that detailed the duties he performed as President of LPI to justify his salary of \$60,000.00 was quickly approaching</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the LPI contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff's reference to the “California Code of Contracts” is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting that code is “ensure full compliance</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>when Thella Bowens (Doe No.1) made the decision to begin an 'investigation' of the Plaintiff. Bowens wanted Maurice Gray to continue in that position, partly because he was black, and she favored protection of the black employees, but also because she did not want anyone, including the Plaintiff, to speak up and oppose whatever decisions she made, whether they involved misuse of government funds as the Plaintiff believed when he opposed and objected to the leases that cost the Authority millions of dollars for nothing in exchange. Over and over again the Plaintiff voiced his opinions that waste of money occurred when Enarson, with Bowen's approval, failed to consider the budget and its inability to sustain payments when no revenue could be generated from projects improperly negotiated and Bowen's refusal to address those problems. LPI was the last straw for Bowens. The Plaintiff believed that Bowens and her Vice Presidents were using favoritism as a form of corruption in the LPI contract. There is no other 'justification' for the timing, the identity of the retaliations <i>[sic]</i>, and the secretive and calculated course of conduct that Bowens called for choosing to 'investigate' the Plaintiff at that time. Bowens cannot show independent reasons for her hiring of an 'investigator' that demonstrates clear and convincing evidence that she would have conducted an 'investigation' if the Plaintiff had not engaged in protected disclosures or refused to participate in suspected and actual violations of state law governing public contracts."</p>	<p>with competitive bidding statutes as a means of protecting the public from misuse of public funds." None of Plaintiff's alleged disclosures could reasonably be interpreted as a disclosure of a "violation" of this statement of legislative intent.</p> <p>2. A republication of publicly known information or findings does not support a Labor Code section 1102.5 claim because the plaintiff is not "making known" the violations of law. (See Labor Code § 1102.5(b); See e.g. <i>Holmes v. General Dynamics Corp.</i> (1993) 17 Cal.App.4th 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public policy doctrine].)</p>
<p>Paragraph 38, which reads: "The Ethics policies and Code are not uniformly followed, enforced or used by Authority management. The Plaintiff was singled out because he opposed and objected on numerous occasions to the actions of the Authority's President/ CEO Thella Bowens and her Vice Presidents</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>1. Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably</p>

ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>when he believed he had reasonable cause to believe that the opposition was necessary to disclose a violation of state statute, or a violation or noncompliance with a state statute, rule or regulation. The Authority, as the Plaintiff's employer, retaliated against the Plaintiff for having exercised his rights under Labor Code section 1102.5(a)(b) (c)."</p>	<p>believes was violated by the Authority's conduct, as required by Labor Code section 1102.5. (Labor Code § 1102.5)</p>
<p>Paragraph 43 which reads: "The Plaintiff was forced to resign his position from the Authority because he had disclosed in good faith to his own Authority, a government agency, the violations of the Authority regarding its misuse of money, waste of government funds, the violations of law regarding four projects of which he had personal knowledge of the violations of law and rules and regulations that the Authority violated repeatedly."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the Authority's acts, as required by Labor Code section 1102.5. (Labor Code § 1102.5)</p>
<p>Paragraph 44, which reads: "The Plaintiff absolutely made clear his opposition in private meetings, in public meetings, and at open door and closed door meetings, to the failure of the Authority to implement the annexation of the space needed to have the women's restroom comply with the ADA requirements to provide access to disable [<i>sic</i>] travelers and to complete the project at a reasonable cost and in a timely manner. The American Disabilities Act and its enabling statutes and regulations are federal law and federal regulations."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff does not allege facts supporting his ultimate conclusion that he reasonably believed the Authority violated the ADA. Instead, he only alleges that he reported that the Authority was restricted from complying with the ADA and the Authority was thus required to increase the project budget by over \$2 million. Plaintiff fails to allege <u>which</u> ADA provision was purportedly violated, or <u>how</u> the "side deal" or project's cost increase purportedly violated the ADA. Because plaintiff fails to allege facts supporting his conclusory allegation, he could not have had a reasonable belief that the Authority was violating the ADA, as required by Labor Code section 1102.5.</p>



ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
<p>Paragraph 45, which reads as follows: "The Plaintiff made clear to the Vice President to whom he reported that he objected and opposed during the negotiations and the due diligence process that Enarson (Vice President and confidante to Thella Bowens) was not properly understanding the lawful use and conditions of the General Dynamics property that resulted and continues to result in losses of millions of dollars for the Authority in violation California Public Utilities Code section 170056(f)(1)(2)(3)"</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff could not have had a reasonable belief that the General Dynamics lease violated a federal or state law because the terms of the lease were authorized by statute. (See Public Utilities Code § 170056(f); Labor Code § 1102.5 [reasonable belief requirement])</p>
<p>Paragraph 46, which reads as follows: "The Plaintiff disclosed and opposed the misuse and waste of the unusable land around the Teledyne Ryan property at Capitol Improvement meetings, at weekly Operations meetings, at Directors meetings and other times that the acts violated the California Public Utilities Code section 170056(a)(1)(B)"</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff could not have had a reasonable belief that he was reporting a statutory violation when the referenced statute is in no way connected to the complained of conduct. (See California Public Utilities Code section 170056(a)(1)(B); Labor Code § 1102.5)</p>
<p>Paragraph 47, which reads: "The Plaintiff conducted numerous disclosure meetings with the Vice President to whom he reported regarding the failure of LPI to meet the expenses and conditions that the company had used to bid on the parking operations contract in violation of California Code of Contracts section 1100; section 100. The Plaintiff also met repeatedly with Maurice Gray of LPI and gave him extended help and time to come into compliance on the contract and he failed and refused to do so. This correlated with the idea of conducting an 'investigation' of the Plaintiff rather than of the contractor."</p>	<p>This paragraph is subject to a motion to strike under California Code of Civil Procedure section 436(a) because it contains improper and irrelevant allegations as follows:</p> <p>Plaintiff has not set forth a state or federal law, rule, or regulation that he reasonably believes was violated by the LPI contract, as required by Labor Code section 1102.5. (Labor Code § 1102.5) Even if Plaintiff's reference to the "California Code of Contracts" is meant to refer to the California Public Contract Code, his claim still fails. Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting that code is to "ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds." None of</p>

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ALLEGATION TO BE STRICKEN	LEGAL GROUNDS FOR STRIKING ALLEGATION FROM COMPLAINT
	Plaintiff's alleged disclosures could reasonably be interpreted as a disclosure of a "violation" of this statement of legislative intent.





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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SAN DIEGO

21 JOSE HERNANDEZ,

22 Plaintiff,

23 v.

24 SAN DIEGO COUNTY REGIONAL  
 25 AIRPORT AUTHORITY, a public entity;  
 26 and DOES 1 through 12, inclusive,

27 Defendants.

CASE NO. GIC 871979

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANT SAN DIEGO COUNTY  
 REGIONAL AIRPORT AUTHORITY'S  
 DEMURRER AND MOTION TO STRIKE  
 PLAINTIFF'S SECOND AMENDED  
 COMPLAINT**

Date: May 11, 2007  
 Time: 1:30 p.m.  
 Dept: 75  
 Judge: Hon. Richard E. Strauss  
 Complaint Filed: September 1, 2006  
 Trial Date: Not Set

**EXEMPT FROM FEES  
 GOVT. CODE § 6103**

PAUL, PLEVIN,  
 SULLIVAN &  
 CONNAUGHTON LLP

POINTS AND AUTHORITIES IN SUPPORT OF  
 DEMURRER AND MOTION TO STRIKE SAC

## I.

## INTRODUCTION AND SUMMARY OF ALLEGATIONS

Plaintiff Jose Hernandez has now had three opportunities to plead his claims against the San Diego County Regional Airport Authority's ("Authority"), but the Second Amended Complaint ("SAC") does nothing more than add conclusory allegations that do not support Hernandez' legal theories. In fact, the allegations in each of the three complaints filed in this case are nearly identical, and Hernandez has only modified the complaint by consolidating his allegations into one cause of action instead of four different causes of action. Since Hernandez has only made minor modifications to the allegations in the complaint, he has now shown that he is incapable of properly alleging a viable legal theory against the Authority. As a result, the Authority's demurrer should be sustained without leave to amend and/or its motion to strike should be granted.

Hernandez was employed as a Director of Landside Operations for the Authority. In late December 2005, an Authority employee reported that Hernandez may have violated certain provisions of the Authority's Ethics Code, so it began an investigation. At the conclusion of the investigation, the Authority determined that Hernandez had acted inappropriately by accepting free goods and services from Authority vendors, including free roundtrip tickets to Hawaii, tickets to football and baseball games, and free parking passes. Hernandez resigned from his employment in February 2006 after the Authority informed him of its conclusions.

Hernandez now brings this baseless Second Amended Complaint in an effort to smear the Authority's reputation and to place blame on others for his own personal actions. Primarily, Hernandez alleges that the Authority retaliated against him in violation of Labor Code section 1102.5 for disclosing improper activities, even though Hernandez was merely engaged in his day-to-day duties of evaluating aspects of the Authority's operations. Although the SAC is replete with allegations of the Authority's alleged ethical violations, Plaintiff explicitly alleges that he disclosed only four alleged improprieties (see SAC ¶ 35; see also ¶¶ 10-14):

- The General Dynamics parking lot lease ("General Dynamics Lease") (SAC ¶ 12);
- The Teledyne Ryan parking lot lease ("Teledyne Ryan Lease") (SAC ¶ 13);
- Double-billing of expenses on the Lindbergh Parking ("LPi") Contract (SAC ¶ 14);

1 and

- 2 • Bryan Enarson's alleged "side deal" with Host regarding the women's restroom  
3 renovation in Terminal One (SAC ¶¶ 10-11).

4 However, none of the four disclosures support a Labor Code section 1102.5 claim because:

- 5 • Hernandez has not articulated how the Authority's General Dynamics lease violated  
6 any statute, rule or regulation when the financial terms of that lease are as dictated by  
7 the Public Utilities Code. Thus, Hernandez could not have had a reasonable belief  
8 that the lease violated any law;
- 9 • Hernandez has not articulated a law that he reasonably believed the Authority  
10 allegedly violated by entering into the Teledyne Ryan lease;
- 11 • Hernandez has not articulated a law that he reasonably believed the Authority  
12 allegedly violated with regard to the LPi contract either; and
- 13 • As a matter of law, the Authority increasing the restroom project expense cannot  
14 support a reasonable belief that the Authority violated the ADA or any of its  
15 implementing regulations.

16 For the foregoing reasons, and as more fully discussed in the Authority's supporting papers,  
17 the Authority respectfully requests that this Court sustain its demurrer without leave to amend as to  
18 each cause of action in the SAC. Leave to amend should not be granted because Hernandez has  
19 now had three opportunities to plead a proper and sustainable cause of action. In the alternative,  
20 defendant moves to strike those allegations that are barred by the various deficiencies as detailed in  
21 the notice of motion and motion to strike the SAC.

## 22 II.

### 23 DEMURRER AND MOTION TO STRIKE STANDARDS

#### 24 A. General Standard for Demurrer.

25 A demurrer tests the legal sufficiency of the Plaintiff's complaint. (Code Civ. Proc.,  
26 § 430.10.) Although leave to amend is typically granted liberally, it should be denied where the  
27 nature of the claim is clear, but no liability exists under substantive law. (*Lawrence v. Bank of Am.*  
28 (1985) 163 Cal.App.3d 431, 436.) Thus, denial of leave to amend is proper where the Plaintiff

1 cannot show in what manner he can amend and how the amendment will change the legal effect of  
 2 his pleading. (*CAMSI IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1539.) The  
 3 burden of showing a reasonable possibility of successful amendment "is squarely on the Plaintiff."  
 4 (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Moreover, when a plaintiff is given an opportunity  
 5 to amend the complaint, strict construction of the complaint is required and it must be presumed  
 6 that plaintiff has stated the strongest possible case. (*Gonzales v. State* (1977) 68 Cal.App.3d 621.)

7 **B. Plaintiff Must Plead with Specificity Because the Authority is a Public Entity.**

8 A plaintiff's burden is more difficult when he seeks to impose liability on a public entity, as  
 9 is the case here, because every fact material to the existence of the public entity's liability "must be  
 10 pled with particularity." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.)  
 11 The SAC at issue here falls short of meeting this elevated pleading standard and, as a result, should  
 12 be dismissed without leave to amend.

13 **C. In the Alternative, this Court May Strike any Improper or Irrelevant Material.**

14 In the event that this Court does not sustain the Authority's demurrer to the SAC, the Court  
 15 has the authority to strike any improper or irrelevant matter from the pleadings pursuant to  
 16 California Code of Civil Procedure sections 435 and 436(a).

17 **III.**

18 **HERNANDEZ FAILED TO PLEAD SUFFICIENT FACTS TO WITHSTAND DEMURRER**  
 19 **AS TO HIS LABOR CODE SECTION 1102.5 CLAIM**

20 Hernandez' SAC falls far short of setting forth the specific facts required to plead his Labor  
 21 Code section 1102.5 claim. To establish a *prima facie* case of retaliation under Labor Code section  
 22 1102.5(b), as with FEHA and Title VII, Hernandez must allege that: (1) he engaged in a "protected  
 23 activity;" (2) the Authority took an adverse employment action against him; and (3) a causal link  
 24 exists between his protected activity and the adverse employment action. (*Morgan v. Regents of*  
 25 *University of Cal.* (2000) 88 Cal.App.4th 52, 69.) In order to allege that Hernandez engaged in a  
 26 protected activity, as required by the first prong of the *prima facie* case, Hernandez must allege that  
 27 he disclosed, to a government or law enforcement agency, information that he reasonably believed  
 28 disclosed a violation of state or federal statute, rule, or regulation. (Lab. Code § 1102.5, subd. (b).)

1 It is not enough for Hernandez to allege mere conclusions of law to support his retaliation claims.  
 2 (*Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537.)

3 Hernandez' claim cannot even get off the ground because he did not, and could not have,  
 4 reasonably believed that he disclosed violations of a state or federal statute, rule, or regulation.  
 5 Even though Hernandez amended his complaint to reference federal and state statutes, he either  
 6 knew, or as a matter of law he should have known, that the alleged wrongful acts were permissible.  
 7 As a result, he could not have reasonably believed that the Authority violated a state or federal law,  
 8 rule or regulation, and his retaliation claims as alleged in the SAC fail.

9 **1. Alleged Violations of the Authority's Ethics Code Cannot Support a Retaliation**  
 10 **Claim.**

11 By its very terms, Labor Code section 1102.5 requires a plaintiff to disclose a violation of a  
 12 state or federal law, rule or regulation. (See Labor Code § 1102.5(b).) Hernandez' amended  
 13 complaint focuses primarily on alleged violations of the Authority's own Ethics and Contracts  
 14 Codes, which are simply internal guidelines and not state or a federal laws, rules or regulations.  
 15 Accordingly, the Authority moves to strike all references to the Authority's Ethics or Contract  
 16 Codes violations in the SAC because those allegations cannot support a Labor Code section 1102.5  
 17 cause of action as a matter of law.

18 **2. Hernandez Could Not Have Had a Reasonable Belief That He Was Disclosing a**  
 19 **Violation of a State or Federal Law, Rule or Regulation.**

20 Even *assuming arguendo* that the Ethics Code falls within the definition of a federal or state  
 21 law under Labor Code section 1102.5, the facts, as alleged, do not support Hernandez' ultimate  
 22 conclusion that he reasonably believed that the Authority's actions violated any statutes, nor can  
 23 these facts reasonably be interpreted to amount to any such violation. (See *Ankeny, supra*, 88  
 24 Cal.App.3d at p. 537 [complaint must be supported by more than conclusory allegations].) Further,  
 25 Hernandez has the burden of pleading the specific statute that was allegedly violated, and he has  
 26 failed to meet this burden with regard to his disclosures. (See *Green v. Ralee Engineering* (1998)  
 27 19 Cal.4th 66, 83, fn. 7.) Without facts supporting Hernandez' alleged reasonable belief that the  
 28 Authority's actions violated a federal or state law or specific references to code sections that were

1 violated, Hernandez' retaliation claims must fail.

2 **a. The General Dynamics Lease.**

3 One of Hernandez' alleged protected disclosures involved uncovering alleged financial  
4 problems with the General Dynamics Lease. (SAC ¶ 12.) Both parties seem to agree that the terms  
5 of the General Dynamics Lease were mandated by Public Utilities Code section 170056(f). If  
6 anything, Hernandez' SAC alleges compliance with Public Utilities Code section 170056(f), not a  
7 violation of that statute. (*Ibid.*) Hernandez now alleges that the terms of the lease were in violation  
8 of Public Utilities Code section 170056(f)(3), but Hernandez does not set forth, even in vague  
9 terms, which terms of the lease violated subsection (f)(3). In fact, the only alleged unlawful portion  
10 of the lease on which Hernandez focuses is the dollar amount for the lease, which is set forth and  
11 mandated by subsection (f)(1). Hernandez therefore could not have had a reasonable belief that the  
12 Authority was violating the law by accepting the General Dynamics lease terms, and the Authority  
13 moves to strike any reference to the General Dynamics lease from the SAC. In addition, the  
14 Authority's demurrer to Hernandez' retaliation claim based on alleged disclosures of the General  
15 Dynamics lease should be sustained without leave to amend.

16 **b. The Teledyne Ryan Lease.**

17 Similarly, Hernandez has failed to cure the defects with regard to the Teledyne Ryan lease.  
18 Plaintiff alleges that he disclosed findings related to the environmental contamination on the  
19 Teledyne Ryan Parking Lot and disclosed the amount of money that the Authority negotiated for the  
20 lease. (SAC ¶ 13.) Curiously, plaintiff contends he reasonably believed the Authority's conduct  
21 regarding the Teledyne Ryan lease violated Public Utilities Code section 170056(a)(1)(B).  
22 However, this section merely states that the Teledyne Ryan sublease shall not be transferred to the  
23 Authority, and shall remain the property of the San Diego Unified Port District. This section has  
24 absolutely nothing to do with environmental contamination or the negotiated price for the lease.  
25 Plaintiff could not have had a reasonable belief that he was reporting a statutory violation when the  
26 referenced statute is in no way connected to the complained of conduct.

27 Even if the Authority's conduct is considered a violation of Public Utilities Code section  
28 170056(a)(1)(B), there can be no "disclosure" under section 1102.5 when the complainant merely



1 republishes public information. A disclosure requires that the employee "expose to view" or "make  
 2 known" a violation of the law. (See e.g. *Holmes v. General Dynamics Corp.* (1993) 17 Cal.App.4th  
 3 1418, 1433 [analyzing meaning of "disclosure" under wrongful termination in violation of public  
 4 policy doctrine].) Here, plaintiff's "disclosures" seem to consist of merely talking about  
 5 "information" that was already known to employees of the Authority. (SAC ¶ 13.) If republication  
 6 of publicly known information could constitute a protected activity under section 1102.5, any  
 7 employee of a company who has been sued for any statutory violation could send a copy of that  
 8 complaint to a government official and thus become a "protected" employee under section 1102.5,  
 9 even if that employee was not the plaintiff. Such a result is absurd. A republication does not "make  
 10 known" violations of law and cannot be a disclosure under section 1102.5 as a matter of law.

11 As a result of the foregoing, the "disclosure" regarding the Teledyne Ryan Lease cannot  
 12 support plaintiff's section 1102.5 causes of action, and therefore any reference to that lease must be  
 13 stricken from the Second Amended Complaint.

14 **c. Lindbergh Parking.**

15 In the SAC (SAC ¶14), Hernandez alleges that he reasonably believed that the LPi contract  
 16 violated the Authority's own Contract Code and the "California Code of Contracts." As discussed  
 17 above, the Authority's internal rules are not the equivalent of a state or federal statute, rule or  
 18 regulation, and thus cannot support a claim under Labor Code section 1102.5. In addition, the  
 19 "California Code of Contracts" does not exist and thus cannot be the basis for a Labor Code section  
 20 1102.5 claim. Even if Hernandez meant to refer to the Public Contract Code, his claim still fails.  
 21 Section 100(b) of the Public Contract Code merely states the legislature's intent in enacting the  
 22 code "is to ensure full compliance with competitive bidding statutes as a means of protecting the  
 23 public from misuse of public funds." None of Hernandez' disclosures regarding LPi can be  
 24 construed as a disclosure regarding this statement of legislative intent.

25 **d. The Restroom.**

26 Finally, Hernandez has failed to cure the problematic allegations regarding the restroom  
 27 project. Hernandez claims that there was a "side deal" between Host and Bryan Enarson that  
 28 increased the restroom project cost by more than \$2 million. However, plaintiff's sparse factual

1 allegations do not support his ultimate conclusion that he reasonably believed an ADA violation had  
 2 occurred. Plaintiff conveniently omits any specificity as to which ADA provision he believed was  
 3 violated. Plaintiff also fails to allege how the "side deal" and increased costs associated with the  
 4 restroom project purportedly violated the ADA. Thus, plaintiff could not have a reasonable belief  
 5 that any such violation occurred.

#### 6 IV.

#### 7 CONCLUSION

8 Since Hernandez has demonstrated an inability to cure the defects in his SAC, the Authority  
 9 respectfully requests that the Court sustain its demurrer to all causes of action in the SAC without  
 10 leave to amend. In the alternative, the Authority requests that the Court strike improper allegations  
 11 from the SAC, as further detailed in the notice of motion and motion to strike.

12 Dated: April 19, 2007

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